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Daniel P. Ream v. David L. Tizen : Brief of The Bank of Salt Lake in Answer to Petition of Appellant for Rehearing

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,

DAVID L. FITZEN,

Counterclaim Plaintiff and Appellant,

vs.

PAUL REAM and BANK OF SALT LAKE,

Counterclaim Defendants and Respondents.

Case No. 15220

BRIEF OF THE BANK OF SALT LAKE IN ANSWER TO PETITION OF APPELLANT FOR REHEARING

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 ("Fitzen") against Bank of Salt Lake (the "Bank") Fitzen is alleging that Daniel P. Ream, Paul Ream and the Bank 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 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 Fitzen had put on his case in chief, and before the Bank put on its evidence, the Court granted the Rule 41(b) Motion to Dismiss made by the Bank.

DISPOSITION BY THE SUPREME COURT

The Supreme Court affirmed the decision by the lower court in an opinion filed on June 13, 1978.

RELIEF SOUGHT

The Bank seeks denial of the Petition For Rehearing filed by Fitzen.

STATEMENT OF FACTS

Dan Ream and Fitzen verbally agreed to enter into a joint venture agreement, and thereafter 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 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, Fitzen, Paul Ream (the father of Dan Ream) and Richard Cheney met together in the office of Richard Cheney to discuss such financing (T.102). It was there determined that Dan Ream and Fitzen would borrow from the Bank the money necessary to purchase the truck, and that Paul Ream would guarantee the repayment of the loan (T.104). However, Dan Ream and 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 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, the same individuals again met at the Bank 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 Mr. Mendenhall

was told that Paul Ream wanted a lien on the truck to secure his guaranty of the loan and a second lien to secure his $6,000.00 loan to Dan Ream (T.46 and 117). Fitzen knew of and agreed to the liens in favor of Paul Ream (T.11, 45-46, 105, and 116-118).

ARGUMENTS

I. THE SUPREME COURT DID NOT ERR IN HOLDING THAT THE ACTION AGAINST THE BANK WAS A LAW ACTION AND HENCE, THE FINDINGS OF FACT AND JUDGMENT OF THE TRIAL COURT WERE NOT TO BE DISTURBED.

In the Brief of Fitzen filed in support of the Petition for Rehearing, Fitzen argues that this Court erred by improperly using principles of review for a law action, as opposed to an action in equity. Fitzen argues that the claim against the Bank is an action to void the above noted $6,000.00 lien on the White Truck, which Fitzen asserts is an equity in action. However, as this Court properly held in its opinion, the action against the Bank was a tort action, whereby Fitzen was seeking recovery of damages from the Bank, a legal remedy, and therefore the action was an action at law. It is acknowledged that aspects of the case of Fitzen against the Bank sound in equity, but the true substance of the case is legal, i.e. a tort action to recover damages. As noted in 1 C.J.S. Actions, §54, when an action has mixed legal and equitable considerations, the primary purpose of the action controls its classification as an action at law or in equity. Clearly, the action against the

Bank is an action at law, and this Court did not err in using principles of review for a law action. The arguments of Fitzen in his Brief concerning the conspiracy aspect of this case appear to be irrelevant to the determination of the nature of the action, and therefore the Bank will not respond to such arguments.

II. EVEN ASSUMING THAT THE ACTION AGAINST THE BANK WERE AN EQUITABLE ACTION, THE SUPREME COURT DID NOT ERR IN UPHOLDING THE FINDINGS OF FACT AND JUDGMENT OF THE TRIAL COURT.

Even should the action against the Bank be deemed to be equitable, the Findings of Fact and Judgment of the trial court should still be upheld. This Court cited in its opinion the case of Bear River State Bank v. Merrill, 101 Utah 176, 120 P.2d 325 (1941) for the proposition that the findings of the trial court in an equitable action will not be disturbed unless they are clearly against the weight of the evidence.

In the case of Del Porto v. Nicolo, 27 Utah 2d 286, 495 P.2d 811 (1972), an equitable action to void a deed, this Court stated:

> This court has both the prerogative and the duty to review and weigh the evidence, and to determine the facts. However, in the practical application of that rule it is well established in our decisional law that due to the advantaged position of the trial court, in close proximity to the parties and

> the witnesses, there is indulged a presumption of correctness of his findings and judgment, with the burden upon the appellant to show that they were in error; and where the evidence is in conflict, we do not upset his findings merely because we may have reviewed the matter differently, but do so only if evidence clearly preponderates against them.

27 Utah 2d at 288; 495 P.2d at 812. In Corbet v. Corbet, 24 Utah 2d 378, 472 P.2d 430, (1970), an equitable action for the settlement of partnership accounts, this Court explained:

> [I]t is well established that we make allowance for the advantaged position of the trial judge in close proximity to the parties and the witnesses; and we do not disturb his findings and judgment merely because we might have viewed the matter differently, but would do so only if it appeared that the evidence clearly preponderates against them, or that he so abused his discretion, or misapplied the law, that an injustice has resulted.

24 Utah 2d at 381; 472 P.2d at 432-33.

Even if the action against the Bank were equitable in nature, Fitzen still failed to meet his burden of demonstrating that the evidence clearly preponderated against the findings and judgment of the trial court. The findngs of the trial court that Fitzen knew of and ratified the $6,000.00 lien was substantially supported by the evidence. Both Dan Ream and Richard Cheney testified that Fitzen was present at two meetings where the $6,000.00 lien was discussed and that Fitzen agreed to the $6,000.00 lien.

CONCLUSION

This Court properly held that the action against the Bank was an action at law and this Court properly applied the principles of review applicable to a law action. However, even if the action was equitable, this Court would still defer to the findings of fact of the trial court, and should uphold such findings, which were supported by substantial evidence.

Respectfully submitted,

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