1977

Richard Greenhalgh v. Ben Mitchell : Brief of Respondent

Utah Supreme Court

SDave McBullin; Attorney for Plaintiff-Respondent;
Don Blackham; Attorney for Defendant-Appellant;

IN THE SUPREME COURT
OF THE STATE OF UTAH

RICHARD GREENHALGH,
plaintiff-Respondent,

vs

BEN MITCHELL,
Defendant-Appellant

Case No. 15305

BRIEF OF RESPONDENT

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BRIEF OF RESPONDENT

APPEAL FROM A JUDGMENT OF THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY, THE HONORABLE ALLEN B. SORENSEN, DISTRICT JUDGE.

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RICHARD GREENHALGH,
Plaintiff-Respondent,

vs

BEN MITCHELL,
Defendant-Appellant

CASE NO. 15305

BRIEF OF RESPONDENT

STATEMENT OF NATURE OF CASE

Respondent sued appellant in contract for material supplied and use of machinery to gravel a 1200 foot road way to appellants property near Santaquin, Utah.

DISPOSITION IN THE LOWER COURT

This case was tried before the Honorable Judge Allen B. Sorensen, sitting without a Jury. The lower court held in favor of the plaintiff and against the defendant that there was a contract and the material supplied and the machine work performed was reasonable. Defendant and appellant prosecuted this appeal.

RELIEF SOUGHT ON APPEAL

Defendant appellant is seeking a reversal of Judge Sorensen's decision. Plaintiff respondant urges affirmance of Judge Sorensen's decision.

STATEMENT OF FACT

The respondent is a small contractor living in Santaquin, Utah, and he has an employee by the name of Eldon Greenhalgh, a cousin of respondent, who operates his equipment for him. Mr. Eldon Greenhalgh, has worked for the respondent for 14 years (R-3). Appellant approached Mr. Richard Greenhalgh to do certain type of construction work and was referred by Mr. Richard Greenhalgh, the respondent, to Eldon Greenhalgh to do the work with the respondent's equipment (R-8).

The appellant approached Mr. Eldon Greenhalgh in May, 1973, (R-3) and requested Eldon Greenhalgh, using equipment belonging to the respondent, Richard Greenhalgh, to cut in a road on the foothills above Santaquin, Utah. After cutting in the road, the appellant paid Eldon Greenhalgh for the work by a check made payable to respondent (R-6). At that time appellant ask Eldon Greenhalgh to put some gravel on the road for him (R-4-17). Eldon Greenhalgh informed the respondent that Mr. Mitchell, appellant, desired gravel to be put upon the road (R-8). The respondent graveled the road on July 7, 1973 (R-9), putting on 540 yards of gravel and doing 5 hours of work leveling the gravel on the roadway. The appellant was sent a bill for the work performed by the respondent, and replied to the respondent's billing with a letter called plaintiff's exhibit No. 4 setout as follows:

"Mr. Greenhalgh,

I was suprised when we received this bill for the gravel you hauled on our road. We hadn't intended for you to go ahead without consulting us on this large of a expenditure. We have been in the process of moving back to Utah and are presently located at Duchesne, Utah.
The relocation has taken most of our money that we had intended to improve that property. I also appreciate you doing the work and intend to pay you as soon as possible. I have some money owed to me that I hope to receive by the 1st of November. As soon as I receive this I will send you some. I may not be able to pay you all of it, but will pay the balance as soon as possible. Please do not do any more work on the road without hearing from me.

Ben Mitchell"

Appellant thereafter refused to pay any part of the obligation and action was commenced July 15, 1976, three years later.

ARGUMENT

Point No. I

THE TRIAL COURT RULING DENYING DEFENDANT (APPELLANT) MOTION TO DISMISS AT THE CLOSE OF PLAINTIFF (RESPONDENT) CASE WAS NOT ERROR.

The appellants argument goes to the question, was there privity of contract between the respondent and appellant? It is the position of the respondent that Mr. Eldon Greenhalgh was an agent and employee of Mr. Richard Greenhalgh, the respondent. The facts show that the appellant contacted Mr. Greenhalgh, respondent, and respondent sent the appellant to his employee Mr. Eldon Greenhalgh to perform the work. The first check was made payable for the initial cutting in of the road, to Mr. Richard Greenhalgh, respondent. These facts were not contradicted in any manner by the appellant.

the appellant dealt with the agent employee of the respondent knowing that Mr. Lidon Greenhalgh was the employee of respondent. The fact that a person makes an agreement with an agent of a principal knowing that he is an agent does not relieve that person from his contract.

Further evidence is shown in respondent's (plaintiff) exhibit No. 4 that the appellant acknowledged that the respondent, Mr. Richard Greenhalgh, was the principal and he would pay as soon as possible.

The pleadings of the appellant further setsforth that the appellant admits requesting work to be done. These facts are undisputed.

The question before this Court is a question of fact as to whether there was privity of contract between the parties. The great weight of the evidence is that there was a contract between respondent and appellant. The lower court setting as a Finder of Fact held that there was privity of contract between the parties.

POINT NO. II

THERE WAS A CONTRACT ESTABLISHED BETWEEN PLAINTIFF (RESPONDENT) AND DEFENDANT (APPELLANT).

In reply to Point No. II of appellants argument as to mutuality of assent, the respondent submits that the case of E. B. Wicks Co., v. Moyle 103 Utah 554, 137 Pac. 2nd 342, which is precedent that to have a contract, there must be mutuality of assent. The fact is that the appellant requested

of Mr. Eldon Greenhalgh put some gravel upon the road (R-4), (R-17), the road was 1200 feet long (R-27) and 12 feet wide (R-28).

The respondent and employee agent put gravel upon the road as requested. The appellant acknowledged in exhibit No. 4, that he had requested the gravel; that the expenditure was larger than expected, but that he appreciated the respondent doing the work. To properly gravel the 1200 foot roadway it required the amount of gravel put on by the respondent as requested by the appellant. The facts again, are to the effect that there was a meeting of the minds. Again, this is a question of fact which the lower court resolved.

The preponderance of the evidence is to the effect that the appellant requested the road be graveled; that the cost of the gravel was reasonable and the charge of spreading the gravel was reasonable as held by the lower court. The rule of the Supreme Court review is that the appellate court will not upset the findings so long as there is any reasonable evidence or substantial basis in the evidence to support it. Erickson v. Bennion 503 Pac. 2nd 539. Christensen v. Christensen 9 Utah 2nd 102, 339, Pac. 2nd 101.

CONCLUSION

Respondent respectfully submits that decision of the court below should be affirmed with costs to plaintiff and respondent.

Respectfully submitted,

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