

1977

Robert D. Tobias And Dorothy M. Pilcher v. Brasher' S Mobile & Motor Homes v. Motors Insurance Corporation : Brief of Appellants

Utah Supreme Court

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IN THE SUPREME COURT
OF THE
STATE OF UTAH

ROBERT D. TOBIAS and
DOROTHY M. PILCEER,

Plaintiff-Appellants,

v.

Case No. 15336

BRASHER'S MOBILE & MOTOR HOMES,

Defendant-Third Party
Plaintiff-Respondent,

v.

MOTORS INSURANCE CORPORATION,

Third Party Defendant.

BRIEF OF APPELLANTS

APPEAL FROM THE JUDGMENT OF THE THIRD
JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH, HON-
ORABLE G. HAL TAYLOR, JUDGE, PRESIDING

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OF THE
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ROBERT D. TOBIAS and	:	
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v.	:	
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Plaintiff-Respondent,	:	
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Plaintiff-Respondent,	:	
	:	
v.	:	
	:	
MOTORS INSURANCE CORPORATION,	:	
	:	
Third Party Defendant.	:	

BRIEF OF APPELLANTS

STATEMENT OF THE NATURE OF THE CASE

Appellants appeal from the judgment of the lower court dismissing appellants' Complaint and entering judgment in favor of respondent on respondent's Counterclaim.

DISPOSITION IN THE LOWER COURT

On June 17, 1977 the Honorable G. Hal Taylor heard oral arguments on defendant Brasher's Motion for Summary Judgment. Defendant Brasher's Motion was granted and appellants' Complaint was dismissed. Defendant Brasher's also moved for

summary judgment in its favor on its Counterclaim. The court granted defendant Brasher's Motion on its Counterclaim and ordered appellants to surrender possession of the 1973 Airstream Travel Trailer, serial number 131B3S1849, which was the subject matter of the lawsuit, within ten days or a money judgment in the sum of \$9,201.79, together with interest at the rate of eight percent (8%) per annum, would be entered in favor of defendant Brasher's against appellants. The court also awarded defendant Brasher's \$950.00 attorney fees and \$27.00 costs.

Pursuant to the above Court Order, respondent took possession of the Travel Trailer.

RELIEF SOUGHT ON APPEAL

Appellants seek to have the District Court's judgment vacated and defendant Brasher's Counterclaim dismissed, and to have judgment entered in appellants' favor on their Complaint or, in the alternative, to have defendant Brasher's Counterclaim dismissed, and that defendant Brasher's be ordered to deliver to appellants their Travel Trailer or, in the alternative, granting appellants a money judgment for the value of the Travel Trailer, plus interest.

STATEMENT OF FACTS

Pursuant to Rule 75(m), Utah Rules of Civil Procedure, defendant Brasher's filed a Statement of Proceedings in lieu of

Transcript which appellants accepted without reservation. In view of that arrangement between the parties, appellants will limit their statement to those facts as expressed in the Affidavits, exhibits, pleadings and answers to interrogatories and request for admissions.

"In January of 1974, Brasher's Mobile & Motor Homes, hereinafter 'Brasher's', purchased from Motors Insurance Corporation, hereinafter 'MIC', a used 1973 Airstream Travel Trailer, Serial No. 131B3S1849. MIC represented to Brasher's that said trailer had been stolen and was recovered in the State of Washington. MIC delivered to Brasher's a Washington Certificate of Title to the trailer.

"On or about July 26, 1976, Brasher's sold said trailer to Robert D. Tobias and Dorothy M. Pilcher, plaintiffs herein.

"At the time the trailer was sold to Pilcher and Tobias, an employee of Brasher's erroneously recorded the serial number 131B3S2839 on the Installment Sale and Security Agreement. Said serial number is located on the door plate of the trailer and was apparently placed there by whoever had stolen the trailer. The correct and original serial number 131B3S1849 was replaced on the right front drawbar of the trailer by the Washington Department of Motor Vehicles.

"Upon attempting to title the trailer, Brasher's discovered the error on the Installment Sale and Security Agreement and corrected it. A valid Utah Title was obtained with the correct serial number. The subject trailer currently is duly licensed and titled in the State of Utah.

"Said trailer can and may be licensed in the State of Washington.

"Subsequent to the sale of the subject trailer, Brasher's negotiated the contract to Zions First National Bank. Contrary to the terms of the Installment Sale and Security Agreement, a copy of which is attached to plaintiffs' Complaint, plaintiffs made no payments to Zions First National Bank since October 21, 1976.

"On April 20, 1977, Zions First National Bank received \$9,201.79 as a payoff on the loan for the underlying transaction for plaintiffs' mobile home. Since April 20, 1977, Brasher's have received no payments on the subject mobile home." (R. 64-66, all citations omitted.)

In addition to the above facts, the uncontroverted admissions and interrogatories indicated:

1. That the trailer was not licensed with the proper identification number by the respondent in the State of Utah until such time as the identification number was altered and that a safety inspection sticker and temporary license plate number, issued in Utah, both showed a previously altered incorrect number (R. 84).

2. That the Travel Trailer was not insurable (R. 85).

3. That prior to the filing of the Complaint, plaintiffs received no communications from respondent on how to license the trailer in Washington before returning it to Utah to return it to respondent after having unsuccessfully tried to license and insure the trailer in the State of Washington (R. 86).

Based on counsel's stipulation that no issue of fact remained to be decided, the court entered its judgment on the

Motions for Summary Judgment dismissing plaintiffs' Complaint and granting defendant judgment on its Counterclaim.

ARGUMENT

POINT I

THE COURT ERRED IN GRANTING SUMMARY JUDGMENT ON DEFENDANT'S COUNTERCLAIM AND DISMISSING PLAINTIFFS' COMPLAINT.

A Motion for Summary Judgment in favor of a defendant's Counterclaim may only be granted when no question of fact remains to be decided and when as a matter of law a defendant is entitled to such a remedy. In re Williams Estates, 10 U.2d 83, 348 P.2d 683. Furthermore, the proper judicial attitude is to carefully scrutinize the record and discover whether or not the party against whom the judgment would enter has presented allegations which, if true, would entitle him to judgment; if such allegations are present then summary judgment in favor of a defendant is improper. Rich v. McGovern, Utah, 551 P.2d 1266. Finally, this court has held that summary judgment is only proper when it clearly appears that the party against whom the judgment would be granted cannot possibly establish a right to recover, Reliable Furniture Co. v. Fidelity & Guaranty Insurance Underwriters, 16 U. 2d 211, 398 P.2d 685, or that on undisputed facts the party against whom summary judgment is sought has no valid defense, Disabled American Veterans v. Hendrixson, 9 U.2d 152, 340 P.2d 416. The above general principles of law are too well settled in this and other jurisdictions to be open to serious argument.

Turning to the pleadings in this case, it will be clearly seen that the answer to defendant's Counterclaim is an affirmative statutory defense: that defendant was barred from bringing his Counterclaim by Section 41-3-3, Utah Code Annotated, 1953. That section provides that no dealer of used motor vehicles, of which a Travel Trailer is one (Section 41-3-7(a), Utah Code Annotated), may bring an action to recover the vehicle or price thereof, where the dealer has failed to comply with the terms and provisions of this act," meaning Section 41-3-1, et seq., Utah Code Annotated, 1953. The stipulated facts bring defendant Brasher's Mobile and Motor Homes within the ambit of the statute: Brasher's has admitted selling the used travel trailer to plaintiffs.

Appellants are mindful of this Court's decision in Clearfield State Bank v. Peters Plumbing & Heating Co., 100 Utah 136, 349 P.2d 618 (1960). That case would appear to destroy appellants' position, since the holding indicates that Section 41-3-3, Utah Code Annotated, 1953 only applies to used motor vehicle dealers who purchase their used vehicles from non-resident dealers. The third party defendant in this case, Motor Insurance Corporation, is arguably a resident dealer. Be that as it may, the Clearfield, supra, case is inapplicable because Brasher's was the dealer.

Clearfield deals with used cars exclusively and this case had specific reference to Section 41-3-1, Utah Code Annotated.

tated, 1953, which required bonds for used cars bought from non-resident dealers. From the non-resident reference in Section 41-3-1, Utah Code Annotated, the majority court interpreted that section of the Code as applying only to non-residents therefore indicating a legislative intent to override Clearfield. That section was repealed in 1967 (L. 1967, Ch. 86, Section 3). No limitation now applies with respect to the sale of any used motor vehicle and none have ever appeared with respect to the sale of used travel trailers. With the repeal of Section 41-3-1, such a limited purpose for the statute no longer exists and no statutory language is extant in the current statute to warrant such an interpretation.

Since Section 41-3-3 applies to the instant factual situation, defendant Brasher's is subject, pursuant to the act, to Section 41-3-23(a)(4), Utah Code Annotated, which reads in part:

- "(a) It shall be unlawful and a violation of this act for the holder of any license issued under the terms and provisions hereof: . . .
- (4) To violate any law of the State of Utah now existing or hereafter enacted respecting commerce in motor vehicles . . .

The clear import of the statute then is to enforce Section 41-3-3 if a used motor vehicle dealer does not comply with the law of the State of Utah with respect to the sale of used motor vehicles.

Appellants' answer alleged violations of Section

41-1-19, 41-1-120 and 41-20-1, Utah Code Annotated, 1953. The provisions of 41-1-19 make the provisions of 41-1-18 applicable to trailers. These sections could not be complied with by appellants because defendant Brasher's sold and delivered a trailer with an altered serial number. Consequently, the title and registration issued by the State of Utah were incorrect and improper.

Section 41-1-120 makes it a felony to buy a vehicle whose engine number or identification number has been removed, defaced, covered, altered or destroyed. The stipulated facts are clear that defendant Brasher's did in fact purchase such a motor vehicle from Motors Insurance Company. The stipulated facts are clear that defendant Brasher's knew the number to have been altered and subsequently sold the travel trailer to appellants using the altered identification number which was in fact the cause of appellants' inability to register and license the vehicle in the State of Washington.

Finally, appellants alleged that defendant Brasher's failed to comply with Section 41-20-1, Utah Code Annotated, 1953, in that the travel trailer did not have an inscription on the trailer permanently identifying the trailer as a travel trailer.

None of these defenses were defeated by the facts stipulated. In fact, the actual breach of these provisions was what caused the problems. As was stipulated by counsel, the appellants purchased the travel trailer on July 27, 1976.

ments on the trailer were made until October 21, 1976. Throughout that time, appellants attempted to license the vehicle in the State of Washington and were unable to do so. Appellants communicated their problem to defendant Brasher's after they had already brought the trailer back to Utah, and appellants incurred expenses and were subjected to substantial inconvenience.

The statutes in question are specifically designed to prevent the specific occurrences which transpired in this case. Especially are the statutes applicable when defendant Brasher's had actual knowledge of the difficulties when it purchased the travel trailer and sold it to appellants. To repeat, it is the specific purpose of the statutes to protect innocent purchasers from the risks of the type involved in this case. It is the sellers who can discover these discrepancies. The flagrant negligence exhibited by defendant Brasher's when, in fact, the defendant had the information and should have exercised caution to prevent what it knew or should have known would have caused a difficulty for appellants is distressing both to appellants and to other purchasers if defendant Brasher's can escape the implications of Section 41-3-3, Utah Code Annotated, 1953, under the circumstances in this case.


Since the answer to defendant Brasher's Counterclaim was never negated and not disproved by the record or the stipulated facts, it is appellants' contention that summary judgment should not have been granted defendant Brasher's on its Counter-

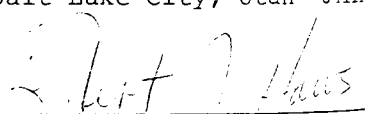
claim. Furthermore, these very acts were the breach of warranty which appellants claimed for a Complaint and the trial court erred in dismissing appellants' Complaint and not dismissing respondent's Counterclaim.

CONCLUSION

Defendant Brasher's violation of pertinent statutory provisions and breach of warranty were not controverted by the stipulated facts and, therefore, the lower court erred in granting defendant's motions for summary judgment.

Respectfully submitted,


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CERTIFICATE OF MAILING

I hereby certify that I mailed true and correct copies of the foregoing, postage prepaid, to Jeffrey N. Clayton, Attorney for defendant Brasher's, 600 Deseret Plaza, 13 East Fifth South, Salt Lake City, Utah 84111; and to Alan D. Frandsen, Attorney for defendant Motors Insurance, 353 East Fourth South.

Lake City, Utah 84111, on this 21st day of December, 1977.

Leit. Haus