1978

Bank of Salt Lake, A Utah Corporation, And Norton Parker, An Individual v. Globe Leasing Corporation, A Utah Corporation; Al Weigelt And Gloria Morrison, Individuals : Reply Brief of Appellant

Utah Supreme Court

IN THE SUPREME COURT

OF THE

STATE OF UTAH

BANK OF SALT LAKE, a Utah corporation, and NORTON PARKER, an individual,

Defendants-Appellant,

vs.

Case No.

15337

GLOBE LEASING CORPORATION, a Utah corporation; AL WEIGELT and GLORIA MORRISON, individuals,

Plaintiffs-Respondent.

REPLY BRIEF OF APPELLANT

An appeal from a judgment of the Third Judicial District Court of Salt Lake County, State of Utah, the Honorable Peter F. Leary, Judge.

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NATURE OF THE CASE

The earlier statement of the case by Appellant in its original brief will be sufficient for purposes of this Reply Brief.

DISPOSITION IN LOWER COURT

Reference is made again to the statement of the lower court disposition made in its original brief.

RELIEF SOUGHT ON APPEAL

Appellant seeks reversal or remand of this case.

STATEMENT OF FACTS

Appellant relies, for purposes of this reply brief, upon its statement of the facts in the original appellate brief filed with the court.

ARGUMENT

THERE IS NO EVIDENCE TO SUPPORT A CAUSE OF ACTION FOR INTERFERENCE WITH PROSPECTIVE ECONOMIC OR BUSINESS RELATIONS OR ADVANTAGES INDEPENDENT OF SIMPLE BREACH OF CONTRACT BY APPELLANT.

Globe's brief to the court specified precisely, perhaps for the first time, the nature of the claim being made against the Bank. Globe claims that the termination of a contract to loan money and the actions of the Bank in affecting direct collection of lease payments assigned to it

were, along with the dishonor of certain checks, the cause of 1) the loss of Globe's existing source of financing, 2) the inability to obtain financing from other sources, and 3) consequently, the inability to continue its leasing business and the loss of the expectancy of future profitable lease contracts.

The Bank's termination of further financing and its notification of lease assignment to the automobile lessees of Globe, if wrongful at all, were simply contract breaches. The undisputed evidence before the court below establishes an express contract providing that the Bank would loan funds to Globe subject to certain conditions and under specific termination rights. There was no evidence of any other contractual or quasi-contractual right or expectancy in Globe for the receipt of loan funds from Bank. Under the circumstances in evidence, the allegations of Globe setting forth the Bank's refusal to continue lending to Globe amount to nothing more than a claim for breach of the contract to loan funds.

As the record shows and, as a matter of law, there was no breach of the contract to loan funds. However, assuming that such a breach occurred, the law is that the remedy is for breach of contract and not for tortious

interference. In Glazer v. Chandler, 414 Pa. 304, 200 A.2d 416, 418 (1964) the Supreme Court of Pennsylvania stated:

> However, where, as in this case, the allegations and evidence only disclose that defendant breached his contracts with plaintiff and that as an incidental consequence thereof plaintiff's business relationships with third parties have been affected, an action lies only in contract for defendant's breaches, and the consequential damages recoverable, if any, may be adjudicated only in that action.
>
> To permit a promisee to sue his promissor in tort for breaches of contract inter se would erode the usual rules of contractual recovery and inject confusion into our well-settled forms of actions. Most courts have been cautious about permitting tort recovery for contractual breaches and we are in full accord with this policy. See Developments in the Law--Competitive Torts, 77 Harv. L. Rev. 888, 968 (1964). The methods of proof and the damages recoverable in actions for breach of contract are well established and need not be embellished by new procedures or new concepts which might tend to confuse both the bar and litigants. (Emphasis added.)

The Supreme Court of the State of Washington has further analyzed Glazer and the principles involved in Cherberg v. Peoples National Bank of Washington, 88 Wash.2d 595, P.2d 1137, 1143 (1977). The Washington Supreme Court there held, in substance, that whether an independent remedy for tortious interference with business expectancies can be founded upon actions which constitute a breach of a

contract with the plaintiff by the defendant, depends upon whether the "interference with business relations was a mere incidental consequence of the breach or a motive or purpose therefor." Id. at 1143. That court goes on to say that such independent tort liability may be properly imposed where the motive for the breach is "not a privileged motive." Id. at 1144. The Glazer and Cherberg decisions together stand for the proposition that in order for tortious interference to be a separate and independent cause of action in circumstances also constituting breach of contract, the interference resulting must be the purpose or objective of the defendant and the defendant must be shown to stand to gain some unfair advantage or benefit from such interference or that the defendant desires to interfere for the sake of interference, i.e. maliciously. 1/

In this case, there was no evidence of malice or other improper motive for the alleged breach outside the confines of the "parties' obligations under their existing agreement." Id. at 1144. Accordingly, at the very least the case should be reversed and remanded to apply damage rules applicable to a contract breach, if any such breach

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1/ See also, Developments in the Law--Competitive Torts, 77 Harv. L. Rev. 888, 968 (1964). The authors indicate that there should be a damage differentiation between interferences arising from "predatory" practices as opposed to those arising from "negligence."

occurred.

The argument is parallel with respect to the notification of assignment made by the bank to the automobile lessees. As both Globe and the Bank have argued, the issue surrounding those assignments and the Bank's actions in relation thereto is whether or not the contracts assigning the leases afforded collection rights of the kind asserted or whether such actions were a breach of contract. Globe argues that a condition to the notification and collection right under those assignment contracts was not met. Thus the cause of action is for breach of contract. The record contains no evidence that the Bank could gain by any interference with Globe's relations with other lending institutions or with its potential customers. The Bank's actions were not malicious. The evidence is that such interference, if any, resulting from the Bank's actions was purely "incidental" to the alleged breach and not the motive or purpose of the breach.

The finding of tortious interference at least on the basis of the credit termination and the assigned lease collection efforts of the Bank is erroneous under the law. The Bank is entitled to a reversal or remand for a determination by the trial court of whether or not it

breached the loan and lease assignment contracts and, if so, what the appropriate measure of damages should be under contract law as opposed to tort law.

DATED this 6th day of June, 1978.

Respectfully submitted,

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