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Pam Riley v. Les Inabnit dba Uintah Auto Sales, Carefree Homes : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

PAM RILEY, Plaintiff/Appellant,	:	
vs.	:	Case No. ~~970115~~ 970297-CA
LES INABNIT, dba UINTAH AUTO SALES, CAREFREE HOMES, Defendant/Appellee.	:	Priority No. 15

REPLY BRIEF OF APPELLANT

PLAINTIFF'S APPEAL FROM A CIVIL JUDGMENT AND ORDER ENTERED ON OR ABOUT JANUARY 28, 1997 AND FILED ON FEBRUARY 29, 1997 BY THE EIGHTH JUDICIAL DISTRICT COURT, THE HONORABLE JOHN R. ANDERSON PRESIDING.

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REPLY

I. In Defendant/Appellee's brief, Defendant fails in any way to address Appellant's first argument concerning whether or not a District Court Judge may, as a matter of law, make ruling based on facts never introduced as evidence in the trial and award or refuse to award damages based on such facts not in evidence. Since Defendant does not in any way deal with this argument it must be assumed that Defendant agrees with the position taken in Appellant's brief.

II. Defendant also does not deal with the issue of whether or not the Trial Court can exceed the jurisdiction of the subject matter granted to the court by the pleadings filed in the case by granting a relief not requested in the pleadings. Again, since Defendant failed to address either of these issues he must be in agreement with them.

III. Defendant fails to discuss whether or not it is reversible error for a Trial Court to fail to award damages in the form of refund of all monies paid by a buyer under a contract of sale for cancellation of contract for sale due to sellers breach of contract as allowed by U.C.C. in Utah Code Annotated § 70a-2-711. His only discussion of this point is indirectly as regarding the failure of the Court to award him repossession rights. If there was a cancellation of the contract the proper award is the full refund of monies.

IV. Defendant's brief claims that Riley's appeal should be dismissed for failure to marshall the facts that support the trial court's decision. This argument relies on the statement as stated in Christensen v. Munns, "when Appellant attacks the evidence, we begin our analysis with the Trial Court's Finding of Fact not with the Appellants view of the way the Trial Court should have found." Cited in Appellants brief, page 12, 812 P.2d, 69, 72 (Ut. Ct. App., 1991)

This ignores Appellant's argument, the Appellant does not attack the evidence. We attack the Findings of Fact and Conclusions of Law based on the fact that they are inconsistent with the pleadings and with themselves. As the Court began to make its ruling, the Court stated: "That the Plaintiff's could have waited for the repairs to be made and there would not be a problem." "(transcript, page 152, lines 10 through 12)" " On the other hand the seller in this case, by his own admission, said he was not really happy with the end result." (Id lines 12 through 15.) The mobile home damage on its face and from these photographs is in all actuality less than it appears. (Id lines 15 through 17) " The damage to the front pillars and the front of the mobile home looks pretty extensive" (transcript page 153, lines 21 through 23). "On ruling on the first cause of action on the Plaintiff's complaint breach of contract rescission, the court finds that there is a failure of consideration to some extent in the final movement of the trailer from the October location to the November location, either by breach of contract on Defendant's part or by the Defendant's negligence." (transcript page 154, lines 9 through 13).

"And the mobile home was clearly damaged. I did not hear any evidence as to damage, the closest evidence I heard was Mr. Inabnit saying it would take two men ten to twelve days labor plus parts. If he is paying two men eight hours a day for ten days, that is eighty hours, paying them $8.00 per hour. (Id lines 14 through 19). The Court went on later to say (transcript page 155, line 19) "that's the neighborhood of $1,000.00". However, the court on its own finding was that the damage Mr. Inabnit was two men working ten to twelve days plus parts at $8.00 per hour, that figure would be between $1,280.00 and $1,536.00 in labor plus the parts. Incidentally, Exhibits 4, 5, 6, 7, 8 and 9 in this case clearly showed ripples in the front of the mobile home. The aluminum punctured, the bed room floor had dropped an inch to two inches, the doors

would not shut, the walls were rippled, the masonite in the bathroom was cracked, the skirting was pulled, both the back and the front windows were broken, a total of six windows broken, the aluminum was pulled away from the wood, the wall was separated from the frame, and paneling was pulled away from the studs. The testimony was that the trailer was damaged, which is attested to by the Courts findings. At the Courts estimate, the damage to the trailer was in excess of 10% to 20% of the total value of the trailer not counting the parts needed to fix it.

The Court went on to find in the Second Cause of Action: "Violation of Uniform Commercial Code, that the breach on the part of Defendant did not escalate to the right of Plaintiff's to reject the goods." Then the Court stated that the"goods were in satisfactory condition at the delivery site and that the negligence occurred getting the unit to its final resting place." (transcript page 154, lines 22 through 25 and page 155, lines 1 through 2). The Court then found that because the Plaintiffs/Appellants "rejected the goods that they then breached their contract by rejecting the offer of repair and asking for rescission of the contract." (transcript page 155, lines 11 through 14). The Court went on to find (page 155, line 25 through page 156) "for the product, I am going to find that there was, because of the sellers negligence and/or breach of contract in Cause One, that the Defendants are relieved from their obligation and to make further payment on the contract. The sellers in this case have had really the benefit of the bargain, they have their property back. The buyers in this case have expectation that their property would be put in their lot and the repairs would be made. They rejected their obligation to finish paying for the thing. Mr. Inabnit was ready, willing and able to make the repairs to finish the deal."

It is logical to believe that the Court transposed the positions of Defendants and Plaintiff (in line 13) in this case and meant that the Plaintiffs are released from their obligation to make further payment on the contract. The Court went on (transcript page 156, lines 18 through 22) to state: "I think it would be fair and equitable in this case... if I go ahead and declare the contract rescinded on both parts. I am going to find negligence but no proof of damages and as a matter of equity, split the $5,000.00 down payment the rental value in $2,975.00." Basically the Court ruled, as a matter of law, that Mr. Inabnit/Respondent was negligent and breached his contract, that both parties were entitled to rescission of those contracts and that Mr. Inabnit should be entitled to damages for breaching the contract. This result flies in the face of the facts and the law.

As a matter of law, there is no evidence to marshall concerning the "rental value" of this trailer. The Court states that he was "arbitrarily just assigning a rental value of $175.00 per month." (transcript page 157, lines 19 through 21) The end result of the Courts decision gave Mr. Inabnit the trailer back, which by his testimony he can repair and resell, assumably again for $10,000.00. Mr. Inabnit held Riley's $5,000.00 down payment for seventeen months and got the interest on that. Mr. Inabnit took the three payments that Riley did make of $166.48, totaling $499.44. Mr. Inabnit had only to return to Riley $2,591.00. That is a good reward for his breach of the contract and his negligence as found by the Court.

CROSS APPELLANT'S CLAIM

A. The Defendant argues: The Court's Conclusions of Law are not consistent with the Court's Findings of Fact. The Court, based on its Findings of Fact should have dismissed Riley's complaint, found that Inabnit was entitled to repossess the mobile in accordance with the security agreement and awarded Inabnit relief requested in his counterclaim.

Riley disagrees: (a) The Court did award Mr. Inabnit the right to repossess the mobile home and to re-sell it. Indeed, Mr. Inabnit had the mobile home in his possession since February, 1996. (b) There was no evidence presented as to whether or not he would be able to re-sell that mobile home or whether or not there would be any deficiency if he were to sell it. The only testimony from Mr. Inabnit was that cited by the Court that he could have any damages to it repaired and then it would be available for re-sell. Appellant agrees that the Court's Conclusion of Law are not consistent with it Findings. The Court found Inabnit negligent and awarded no damages. It rescinded all contracts and gave Inabnit damages for a claim not made by Inabnit, and failed to return Riley's to their original position. The Court ruled that both parties had breached. Inabnit got the trailer and $2,908.49. Riley got a judgment for part of her money back and was left with torn-up trees.

B. Defendant claims: The Court Conclusions of Law, number 2 that Inabnit was not liable for the damage of the removal of the trees is correct and should be affirmed.

It is not correct in that it totally ignores the existence of the contract between Riley and Inabnit to construct the road. The terms of the contract were that Mr. Inabnit would construct a road, adequate to put the trailer in and preserve as many trees as possible. Inabnit did neither. He went in this a backhoe (transcript page 79, lines 20 through 25) and built a road 25 to 35 feet wide (transcript page 81, lines 9 through 10, testimony of Mr. Inabnit) and 600 feet long. (transcript page 79, line 6) According to Mr. Inabnit he knew he was to leave as many trees as possible. (transcript page 80 lines 12 through 14) The result was a road that was inadequate to move the trailer in and many trees just dozed over into other trees. (testimony of Mrs. Riley, transcript page 41, lines 13 through 20) (Exhibits 6 A through D)

The Court found that Mr. Inabnit was negligent in installing the trailer, (transcript page 155, lines 1 through 3) but made specific findings that the "Plaintiffs were not entitled to any damage for the destruction of their trees." (transcript page 157, lines 4 through 5)

Riley should have been awarded damages for the destruction of her property. She asks for remand for a determination of damages.

C. Defendant argues: Conclusion of law cancelling the contract is not supported by the facts.

The Court specifically found that there was negligence in that the delivery of the mobile home and that it was damaged. Based on those findings the Court held that Riley was entitled to rescission of her contract. (transcript page 156-157). Based on that rescission of the contract, it was incorrect for the Court to order that she was not damaged to the full extent of the monies that she had expended on the contract. In other words, the entire $5,000.00 down payment and the $499.44 paid in monthly payments before delivery should have been returned to her.

Defendant argues that the Court was in error in its Conclusion of Law cancelling the contract. The Court specifically found "there was a failure of consideration to some extent in the final movement of the trailer from the October location to the November location either by breach of contract of Defendant's part or by the Defendant's negligence and the mobile home was clearly damaged". (transcript page 154, lines 8 through 14) The court went on to find that the Plaintiff's did not have a right to reject the goods, based on the idea that delivery was accomplished when the tongue was broke and the mobile home was left on the road for a month, not when the trailer was further damaged in setting it on its final resting place on Plaintiff's property. (transcript page 154, lines 22 though 25 and page 155, lines 1 through 3) The Court

ruled incorrectly on when delivery was accomplished.

The contract dealt with delivery to the set-up point, not the road near Plaintiff's property, so the Court is in error in its legal premise. (See Addendum 3 "Other Terms" Agree to Deliver and Set-up north of Duchesne, Utah) The contract made Inabnit responsible fore delivery and set up on their lot. It is apparent from the Findings that the Court believed that Defendant was negligent in the delivery and set-up. The Court was unwilling to make anyone unhappy, and attempted to "cut the baby in half."

This attempt by the Court clearly ignored the provisions of the U.C.C. which allow a purchaser to reject non-conforming goods. A trailer that had damage to it of 10% to 20% of its total value is certainly non-conforming goods. Riley correctly and timely rejected these "goods", and Inabnit picked them up. It was error for the Court not to award her the total amount of monies spent by her.

D. Defendant claims: He should receive his legal fees and costs.

Defendant should not be entitled to reimbursement of his legal fees and costs. The Court specifically found Mr. Inabnit to be in default and negligent, therefore he would not qualify as the non defaulting party as required by the contract. Further, the Court specifically found that he was not going to award attorney's fees. (transcript page 55, lines 24 through 25 and page 158, line 1)

The Court did not award attorney fees to Defendant because he did not rule that there was an enforcement of the contract needed, but in fact that the contract was rescinded. The reality of the parties' actions and the Court's ruling was that the buyer (Riley) rejected non-

conforming goods. Seller took them back and has the benefit of them. The problems occurred when the Court went on to try and make everyone happy and therefore made no one happy.

CONCLUSION

The Court's Findings of Fact and Conclusions of Law in the case are contradictory to themselves and each other. The only clear reading of them would allow Plaintiff to rescind the contract, because of Defendant's breach or negligence. The Court exceeded it jurisdiction awarding damages not asked for based on arbitrary figures to Riley. Those amounts should be stricken and appellant should be awarded the $5,000.00 down-payment and $499. 44 in payments plus interest. Further, the case should be remanded for Findings on the damages to Riley's trees.

DATED this 4 day of December, 1997.

Cindy Barton-Coombs

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 4 day of December, 1997, a true and correct copy of the foregoing REPLY TO APPELLEE'S BRIEF was deposited in the United States mail, postage prepaid, addressed as follows:

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