

1997

Lester Romero v. Dick Hansen : Brief of Appellant

Utah Court of Appeals

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John B. Anderson; Attorney for Appellee.

Lester Romero; Pro Se.

Recommended Citation

Brief of Appellant, *Romero v. Hansen*, No. 970334 (Utah Court of Appeals, 1997).

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UTAH COURT OF APPEALS
BRIEF

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DOCKET NO. 970334 - CA

Lester Romero Pro Se
6270 S 2005 W
West Jordan Utah 84084

IN THE UTAH COURT OF APPEALS

Lester Romero

Plaintiff and Appellant

v.

Dick Hansen, Richard Castleberry,
and Does 1 Through 10,

Defendants and Appellees.

BRIEF OF APPELLANT

Appeal from Decision of
Third Judicial District Court
Judge Timothy R. Hansen

Case No. 970083

~~970065-CA~~ 970334-CA

930900001

John B Anderson
623 East 1st South
Salt Lake City, Utah 84147
Attorney for Appellee

Lester Romero Pro SE
6270 S 2005 W
West Jordan Utah 84084
Pro SE as the Appellant

FILED
JUN - 2 1997
COURT OF

Lester Romero Pro Se
6270 S 2005 W
West Jordan Utah 84084

IN THE UTAH COURT OF APPEALS

Lester Romero

Plaintiff and Appellant

V.

Dick Hansen, Richard Castleberry,
and Does 1 Through 10,

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Appeal from Decision of
Third Judicial District Court
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John B Anderson
623 East 1st South
Salt Lake City, Utah 84147
Attorney for Appellee

Lester Romero Pro SE
6270 S 2005 W
West Jordan Utah 84084
Pro SE as the Appellant

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STATEMENT OF JURISDICTION

The Utah Court of Appeals has Jurisdiction in this matter pursuant to Utah Code Annotated 78-2a-3 (2) (k).

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. If Plaintiff had due process of the law.
2. If Plaintiff's lawyer (Lynn Heward) at the time of settlement had the right to make monetary settlements for me, without my permission nor my signature as he signed the settlement in my name, in effect he forged my name.

PRESERVATION OF ISSUE IN DISTRICT COURT

The issue was presented to the District Court in form 60 (B) 1-7 and Plaintiff was denied to set aside settlement

APPLICABLE RULES

THE following rules are relevant in deciding this case
Utah Rules of Civil Procedure 60 (B) 1-7 78-51-32.

STATEMENT OF THE CASE

This action was brought by Plaintiff to recover the monetary loss of a Diesel Truck that was stored on Defendants storage lot at Fashion Place Park and Defendant sold said Diesel Truck without following Rules to dispose of property subject to a Mechanics Liens, that specified how to treat such property. That Rule is Utah House Bill # 389 and Act Relating To Miscellaneous Liens; Providing a Procedure For the Disposition of Property Subject to Mechanics Liens.

This Act Repeals and Reenacts Section 38-2-4 Utah Code Annotated 1953, As Enacted By Chapter Laws of Utah 1977.

STATEMENT OF Relevant Facts

1. I would like to state that I have no law training and I am using the library to help me with this appeal
2. I feel that I have not had my day in Court, as my Attorney Lynn Heward and Attorney John B. Anderson Attorney for the Defendants have taken roads in settling this law suite without my permission or signed document that states he had that right.
3. Exhibit 1-A Enclosed shows that Attorney Lynn Heward did not have authority to settle without my signature an Exhibit 1- B shows that I did not sign that mention document. Exhibit 1- C shows that Attorney Lynn Heward went ahead and made the settlement without my signature on Exhibit 1-B as well he created a fraud statement that it was to be treated as \$2,500.00 insted of the \$2,000.00 that he settled for (Enclosed Exhibit 1- D) that showes he in facted forged my name in settleing that case that I had not agreed to.
4. The trial was set for Sep. 30, 1996 and I appeard for trial and the Judges Clerk said the trial had been settled
5. I then asked Judge Timothy R. Hansen to dismith the order. See Exhibi 2-1 also 2-2 Affidavit of Plaintiff of Lester Romero, as I had not agreed to have Attorney Lynn Heward settle this case, as I did not authorised verbaly or written to prepair such papers, and when I called Attorney Lynn Heward he said there was nothing he could do about it.
6. Then Judge Timothy R. Hansen denied my request, just saying my request was not well taken. See Exhibit 3- A and

I think that was wrong.

7. I think that the law requires that I have my day in Court and that Attorney Lynn Heward and Attorney John B. Anderson should not be able to set my rights just because I hired Attorney Lynn Heward does not give him the right to prepare documents and make settlements without my oral or written consent.

8. I hope this Appeal Court will look at this Appeal and Rule that I have a right to have a Court Trial and that Judge Timothy R. Hansen erred in his decision to dismiss my request to set aside the dismissal.

9. The Attorney Lynn Heward has the right to negotiate my rights but does not have that right to make monetary settlements for me, without my permission either oral or written and Attorney Lynn Heward did not have that right.

10. Attorney John Anderson answered my request of dismissal of Judge Timothy R. Hansen. See Exhibit 4- A. Attorney John Anderson states a number of laws he states his possession, but nowhere does he state that there is a document signed by me to settle this lawsuit. Therefore for this settlement should be set for trial.

11. I ask that this Court forgive me in the mistakes that I have made.

6/1/97

Jesta Romero


CERTIFICATE OF SERVICE

The undersigned does hereby certifu on the 1
day of June 1997, a true and correct copy of
the foegoing reply to the Court Of Appeals was delivered
to.

Suprem Court of Utah
332 State Capitol
Salt Lake City Utah

and

John Anderson ESQ
Attorney for Defendant.
623 East Frist South.
Salt Lake City Utah.


Lester Romero Pro Se.

LAW OFFICES
LYNN P. HEWARD

923 EAST 5350 SOUTH #E
SALT LAKE CITY, UTAH 84117
TELEPHONE 264-8040
AREA CODE 801

September 23, 1996

Exhibit

Lester Romero
6270 South 2005 West
West Jordan, UT 84084

Re: Romero vs. Hansen

1-A

Dear Mr. Romero:

Enclosed please find a copy of release to resolve the referenced matter in accordance with our communication last week.

I would appreciate it if you would please give me a call so we can coordinate the execution and delivery of that release and to otherwise bring this matter to an end.

If you have any questions or concerns, please let me know.

Yours very truly,


LYNN P. HEWARD
Attorney at Law

RELEASE OF ALL CLAIMS

FOR GOOD AND VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, LESTER ROMERO, an individual, does hereby release, acquit and forever discharge DICK HANSEN, an individual, and all of his agents, subsidiaries, affiliates, employees, and all other persons, corporations, partnerships or other entities acting for or on the behalf of DICK HANSEN of and from any and all actions, causes of action, claims, demands, costs, and expenses on account of, or in any way growing out of, any and all known and unknown claims of whatever nature, whether arising from the suit filed in the Third District Court, State of Utah, Civil No. 930900001, entitled LESTER ROMERO v. DICK HANSEN, RICHARD CASTLEBERRY and DOES 1 through 10 or from any other claim that LESTER ROMERO has or may have against DICK HANSEN as of the date this agreement is signed by the parties.

This Release of All Claims contains the entire agreement between the parties hereto, and the terms of this Release are contractual and not a mere recital. This Release of All Claims is not an admission of liability, but is being executed to settle a disputed claim and to save the time and expense of costly litigation.

The undersigned states that he has carefully read the foregoing Release of All Claims, know the contents thereof, and the same has been signed as his own free will and act for and on behalf of himself.

DATED this ____ day of _____, 1996.

Exhibit 1-B

LESTER ROMERO

SUBSCRIBED AND SWORN to before me, a Notary Public, this ____ day of _____, 1996.

Notary Public
Residing in:

My Commission Expires:

LAW OFFICES
LYNN P. HEWARD

923 EAST 5350 SOUTH #E
SALT LAKE CITY, UTAH 84117
TELEPHONE 264-8040
AREA CODE 801

September 24, 1996

Lester Romero
6270 South 2005 West
West Jordan, UT 84084

Re: Romero vs. Hansen

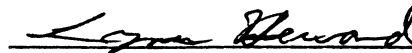
Dear Mr. Romero:

Enclosed please find a copy of the Stipulation and Order filed in the referenced matter. Mr. Anderson has given me the \$2,000, which as I indicated in my letter to you last week, will be treated as if it were in the sum of \$2,500.

As I mentioned to you in my letter yesterday, we still need to coordinate the execution and delivery of the release.

If you have any questions, please let me know.

Yours very truly,



LYNN P. HEWARD
Attorney at Law

Exhibit
1-C

LYNN P. HEWARD #1479
Attorney for Plaintiff
923 East 5350 South #E
Salt Lake City, Utah 84117
Tel. 264-8040

IN THE DISTRICT COURT OF THE THIRD JUDICIAL
DISTRICT IN AND FOR SALT LAKE COUNTY
STATE OF UTAH

LESTER ROMERO,

Plaintiff,

vs.

DICK HANSEN, RICHARD CASTLEBERRY,
and DOES 1 through 10,

Defendants.

)
) STIPULATION FOR
) DISMISSAL WITH
) PREJUDICE
)
)
)

) Civil No. 930900001
)

) Judge Hanson
)

COME NOW the parties hereto, by and through their
respective counsel, and stipulate that the disputes between them
have been fully and completely resolved and that this case should
be dismissed with prejudice.

DATED this 24th day of September, 1996.

Lynn P. Heward
LYNN P. HEWARD
Attorney for Plaintiff

John B. Anderson
JOHN B. ANDERSON
Attorney for Defendant

Exhibit
1-D

EXHIBIT @ 2

Lester Romero
Plaintiff Pro Se.
62905 2005 W
West Jordan, Utah 84084

In the District Court of the Third Judicial
District in and for Salt Lake County
State of Utah

Exhibit 2-1

| | |
|---|--|
| Lester Romero vs Dick Hansen, Richard Castleberry and Does 1 through 10. Defendants | Motion to Set aside Dismissal Civil # 930900001 Judge Hanson. |
|---|--|

Comes now the plaintiff Lester Romero, and
moves the court to enter an order setting aside
the order of dismissal with prejudice dated
Sep 24, 1996.

This motion is based on the fact that
Plaintiff's attorney, Lynn P. Howard, was not
authorized to enter into the stipulation for
dismissal with prejudice dated Sep 24, 1996, all
as more fully set forth in the affidavit attached

Dated this Oct 3, 1996

Lester Romero
Plaintiff

Lester Romero
Plaintiff Pro Se
6270 S 2005 W
West Jordan, Utah 84084

In the District Court of the Third
Judicial District in and for Salt Lake County
State of Utah.

Lester Romero
Plaintiff:
Dick Hansen, Richard Castiberg
and Does 1 through 10,
Defendants

affidavit of Lester Romero
Lester Romero

State of Utah)
County of Salt Lake) ss.

Exhibit 2-2
[REDACTED]

I Lester Romero, being of Salt Lake County, Utah
and the plaintiff herein.

1. I am a resident of Salt Lake County, Utah
and the plaintiff herein.

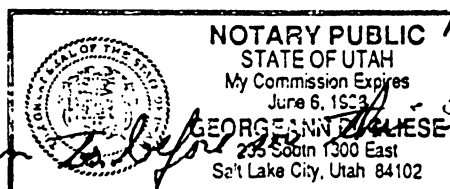
2. I never gave permission to attorney Lynn
Howard to settle this case for the amount stated

3. I came in for trial at 10:00 of Sep 30, 1996
and the clerk said there was no trial and it had been
settled.

Lester Romero
Lester Romero

Oct 3, 1996

Subscribed & sworn to before me



Lester Romero

3rd Day of Oct., 1996
George N. Nye

EXHIBIT 3

4

Exhibit 3-A

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

| | | |
|-------------------------|---|--------------------|
| LESTER ROMERO, | : | MINUTE ENTRY |
| Plaintiff, | : | CASE NO. 930900001 |
| vs. | : | |
| DICK HANSEN, RICHARD | : | |
| CASTLEBERRY, and DOES 1 | : | |
| THROUGH 10, | : | |
| Defendants. | : | |

FILED DISTRICT COURT
Third Judicial District

DEC - 9 1996

By 151 SALT LAKE COUNTY
Deputy Clerk

The Court has before it a request for decision filed by the plaintiff seeking a ruling on the plaintiff's pro se Motion to Set Aside a previous Order of Dismissal. The Court has reviewed the pro se Motion filed by the plaintiff, and has reviewed the Response filed by the defendants. The Court is satisfied that the Motion to Set Aside the Order of Dismissal with Prejudice, which was based upon a stipulation for settlement entered into between counsel for the plaintiff and counsel for the defendant is not well-taken and should be denied.

Counsel for the defendants should prepare an appropriate Order in conformity with this Court's Minute Entry decision, and submit the same to the Court for review and signature.

Dated this 9 day of December, 1996.

151
TIMOTHY R. HANSON
DISTRICT COURT JUDGE

EXHIBIT 4

JOHN B. ANDERSON, ESQ. #091
Attorney for Defendant
623 East First South
P.O. Box 11643
Salt Lake City, Utah 84147-0643
Telephone: (801) 363-9345

Exhibit-4-A

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

| | | |
|-------------------------|---|----------------------------------|
| LESTER ROMERO, |) | DEFENDANT'S REPLY TO PLAINTIFF'S |
| |) | MOTION TO SET ASIDE DISMISSAL |
| Plaintiff, |) | |
| |) | Civil No. 930900001CN |
| vs. |) | Judge Timothy R. Hansen |
| |) | |
| DICK HANSEN, RICHARD |) | |
| CASTLEBERRY, and DOES 1 |) | |
| through 10, |) | |
| |) | |
| Defendants |) | |

COMES NOW the Plaintiff, by and through his undersigned of record, and hereby respectfully submits the following reply to Plaintiff's Motion to Set Aside Dismissal with Prejudice.

STATEMENT OF FACTS

1. Plaintiff brought this lawsuit in 1993 seeking recovery on a 1974 Marmon Tractor allegedly sold by Defendant without the permission of Plaintiff.
2. The case was certified for trial in August of 1996.
3. A final pre-trial was held on September 16, 1996, with trial scheduled on September 30 and October 1, 1996.
4. Between the pre-trial settlement conference and the date of trial, counsel for Plaintiff offered to settle the case for approximately \$4,000.00.

5. Defendant rejected the offer of settlement, and made a counter-offer of settlement of \$2,000.00.

6. On or about September 24, 1996 Plaintiff's counsel accepted the counter-offer of settlement.

7. On or about September 24, 1996, Plaintiff' counsel prepared a stipulation for order of dismissal with prejudice, which was submitted and approved by both Lynn P. Heward, counsel for Plaintiff, and John B. Anderson, counsel for Defendant, which was filed with this court prior to the trial date. (Exhibit A)

8. On that same date a check in the amount of \$2,000.00 was drawn on the trust account of Defendant's counsel and sent to Plaintiff's counsel. (Exhibit B.)

9. On or about October 25, 1996 a copy of the motion to set aside the dismissal with prejudice was sent by the court to counsel for Defendant, wherein Plaintiff alleged that his legal counsel lacked the authority to settle this matter for \$2,000.00

ARGUMENT

THE SETTLEMENT AND SUBSEQUENT DISMISSAL WITH PREJUDICE SHOULD BE ENFORCED UNDER UTAH CODE ANN. 78-51-32.

Plaintiff has argued that the settlement agreement entered into by the parties, and fully performed by the Defendant, should be set aside because his legal counsel did not have the authority to accept Defendant's counter-offer of \$2,000.00 in exchange for a full release of all claims and dismissal of this action with prejudice.

In making this argument, Plaintiff ignores Utah Code Ann., §78-51-32(2), which provides, in pertinent part, that an attorney has the authority:

"To bind his client in any of the steps of an action or proceeding by his agreement filed with the clerk or entered upon the minutes of the court, and not other wise." (Emphasis added)

Under the plain terms of this statute Plaintiff's counsel had the authority to conduct settlement negotiations and reach a settlement agreement (a step of the action), and once the stipulation for dismissal was filed and entered by the court, that settlement became binding on Plaintiff.

If Plaintiff's counsel in fact misunderstood or misinterpreted his client's position on settlement, that misunderstanding should not affect Defendant's position in this case. Rather, the discrepancy between the offer of settlement accepted by Plaintiff's counsel and that desired by Plaintiff himself should be worked out between Plaintiff and his attorney.

(II)
**AN ATTORNEY IS AN AGENT FOR HIS CLIENT
AND UNDER GENERAL PRINCIPLES OF AGENCY
LAW, THE ACTS OF PLAINTIFF'S COUNSEL
ARE BINDING UPON THE CLIENT.**

Plaintiff's motion to set aside the dismissal should also be denied under general tenets of agency law. It is axiomatic that an agent's actions and agreements may bind his principal, where the agent is clothed with either express or apparent authority. In this case it is clear that Plaintiff's counsel is clothed with the apparent authority to negotiate on behalf of his client, and that Defendant had no reason to expect or know that counsel had exceeded his authority when he agreed to settle for \$2,000.00.

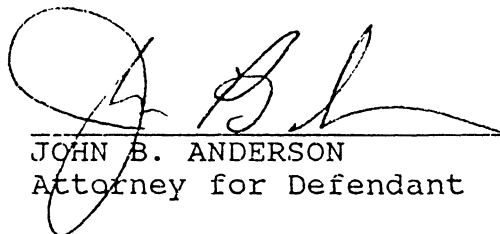
It is the normal for settlement negotiations to proceed through legal counsel, and indeed Plaintiff admits that his attorney had authority to negotiate. His only complaint is that his counsel settled for a price that was too low. Defendant's counsel is precluded from contacting Plaintiff directly to ascertain whether Plaintiff has agreed to the terms of the proposed settlement, and since Mr. Heward not only represented to Defendant's counsel that the settlement offer was satisfactory but filed a pleading with the court finalizing the agreement, Defendant is entitled to rely on the settlement as a final disposition of this case.

Again, if counsel exceeded his authority this is a matter that is best addressed by Plaintiff and Mr. Heward, and should not result in setting aside the dismissal with prejudice.

CONCLUSION

For the reasons set forth above, Defendant respectfully requests that the court deny Plaintiff's motion to set aside the dismissal with prejudice, and further requests the court to enforce the settlement as agreed to by the parties, and as performed by Defendant.

DATED this 1st day of November, 1996.



JOHN B. ANDERSON
Attorney for Defendant

COPY

JOHN B. ANDERSON, ESQ. #091
 Attorney for Defendant
 623 East First South
 P.O. Box 11643
 Salt Lake City, Utah 84147-0643
 Telephone: (801) 363-9345

Exhibit-4.B

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
 SALT LAKE COUNTY, STATE OF UTAH

| | | |
|-------------------------|---|-------------------------|
| LESTER ROMERO, |) | |
| |) | |
| Plaintiff, |) | |
| |) | ORDER |
| vs. |) | |
| |) | |
| DICK HANSEN, RICHARD |) | Civil No. 930900001CN |
| CASTLEBERRY, and DOES 1 |) | Judge Timothy R. Hansen |
| through 10, |) | |
| |) | |
| Defendants |) | |

The Plaintiff's Motion to Set Aside Dismissal with Prejudice came on for consideration by the court, without oral argument, pursuant to the provisions of Rule 4-501 of the Utah Code of Judicial Administration. Having reviewed the motion and memorandum in support of the motion and Defendant's memorandum in opposition to the motion, and having reviewed all other pleadings on file, and good cause appearing:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. Plaintiff's motion to set aside the dismissal with prejudice is denied.

DATED this ____ day of _____, 1996.

BY THE COURT:

THE HONORABLE TIMOTHY HANSEN
 THIRD DISTRICT COURT JUDGE

JOHN B. ANDERSON, ESQ. #091
Attorney for Defendant
623 East First South
P.O. Box 11643
Salt Lake City, Utah 84147-0643
Telephone: (801) 363-9345

④
COPY
Exhibit 4-C

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

| | | |
|-------------------------|---|-------------------------|
| LESTER ROMERO, |) | |
| |) | |
| Plaintiff, |) | |
| |) | ORDER |
| vs. |) | |
| |) | |
| DICK HANSEN, RICHARD |) | Civil No. 930900001CN |
| CASTLEBERRY, and DOES 1 |) | Judge Timothy R. Hansen |
| through 10, |) | |
| |) | |
| Defendants |) | |

The Plaintiff's Motion to Set Aside Dismissal with Prejudice came on for consideration by the court, without oral argument, pursuant to the provisions of Rule 4-501 of the Utah Code of Judicial Administration. Having reviewed the motion and memorandum in support of the motion and Defendant's memorandum in opposition to the motion, and having reviewed all other pleadings on file, and good cause appearing:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. Plaintiff's motion to set aside the dismissal with prejudice is denied.

DATED this ____ day of _____, 1996.

BY THE COURT:

THE HONORABLE TIMOTHY HANSEN
THIRD DISTRICT COURT JUDGE