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Petty Motor Lease, Inc. v. Clarence L. Jolley : Reply Brief of Defendant-Appellant

Utah Supreme Court

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IN THE
SUPREME COURT
OF THE
STATE OF UTAH

FILED

MAR 31 1977

Clerk, Supreme Court, Utah

PETTY MOTOR LEASE, INC.,
Plaintiff-Respondent,
v.
CLARENCE L. JOLLEY,
Defendant-Appellant.

Case No.

15524

REPLY BRIEF OF DEFENDANT-APPELLANT

APPEAL FROM THE JUDGMENT OF THE THIRD
JUDICIAL DISTRICT COURT FOR SALT LAKE
COUNTY, STATE OF UTAH

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]
v.]
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Defendant-Appellant.]

REPLY BRIEF OF DEFENDANT-APPELLANT

STATEMENT OF NATURE OF CASE

See Brief of Defendant-Appellant.

DISPOSITION IN THE LOWER COURT

See Brief of Defendant-Appellant.

RELIEF SOUGHT ON APPEAL

Defendant-Appellant prays for affirmation of the trial court's determination that the Plaintiff-Respondent and Cross Appellant should not be awarded its attorney's fees.

STATEMENT OF FACTS

Defendant-Appellant does not disagree with the Statement of Facts as set forth in the Brief of Plaintiff-Cross Appellant, except for the Plaintiff's characterization,

analysis or criticism of the evidence. However, there is one additional fact which is not stated in the Brief of Plaintiff-Cross Appellant. The agreement regarding the purchase of the three leased vehicles and the Telegift International stock, designated as "Agreement" and introduced as Exhibit 1-P, does not provide for payment of attorney's fees to the Plaintiff-Cross Appellant.

ARGUMENT

POINT I.

THE TRIAL COURT'S DETERMINATION THAT THE PLAINTIFF IS NOT ENTITLED TO ATTORNEY'S FEES WAS PROPER, AND SHOULD BE AFFIRMED BY THE INSTANT COURT:

The Plaintiff in its complaint alleged the following:

The lease agreements provide for the payment of costs and reasonable attorney's fees incurred by Plaintiff in the enforcement of its rights under the lease agreements. Plaintiff has been forced to hire counsel by Defendant's actions, and a reasonable fee to be awarded to Plaintiff for the use and benefit of its attorney herein, is in the sum of \$2,000.00. (R.3)

In his answer to the Plaintiff's complaint, the Defendant admitted this allegation. The Plaintiff contends that this admission constitutes an admission that the Plaintiff should be entitled to attorney's fees in this action. However, this is not the case. In its conclusions of law, the trial court held:

The agreements of June 24, 1971, constitute a sales contract, and the leases are merged into the sales contract. (R.39)

Thus the Court held that the three lease agreements and the sales contract constituted one contract. While the Defendant admitted that the three lease agreements standing alone provide for attorney's fees, the Defendant did not admit that the merged lease agreements and sales agreement constituted a contract which provides for the Plaintiff's attorney's fees.

Since it cannot be said that Defendant admitted that the Plaintiff was entitled to attorney's fees under the merged contract, the instant Court must look to the trial court's findings of fact in determining whether the Plaintiff is entitled to attorney's fees. In looking at the findings of fact, the trial court made no finding that the Plaintiff was entitled to attorney's fees and therefore it must be assumed that the trial court found against the Plaintiff on this issue of fact.

The rules governing the construction of contemporaneous instruments was aptly stated in 17 Am. Jur. 2d. Contracts §264, p. 670:

Construing contemporaneous instruments together means simply that if there are any provisions in one instrument limiting, explaining, or otherwise affecting the provisions of another, they will be given effect as between the parties themselves and all persons charged with notice, so

that the intention of the parties may be carried out, and the whole agreement actually made may be effectuated.

In Berry vs. Crouse (Mo.) 376 SW 2d 107, 111, the court in construing contemporaneous instruments stated the rule as follows:

Correctly stated, the rule is that where two consistent contracts are executed as part of the same transaction, they should be read and considered together in order to ascertain the intention of the parties.

From the foregoing, it is evident that the determination of whether contemporaneous instruments should be merged into one contract is a question of fact in the trial court. Thus, the question of whether merged instruments provide for attorney's fees would also be a question of fact.

In the instant case, the trial court found against the Plaintiff on the factual issue of whether the merged agreements provide for attorney's fees. Under the usual rule of appellate review, the trial court's findings of fact will not be overturned if there is substantial evidence to support the findings. First Western Fidelity v. Gibbons and Reed Company, 27 Ut. 2d 1, 492 P.2d 132 (1971). Certainly, the fact that the sale agreement does not provide for attorney's fees is substantial evidence to support the trial court's determination that the instruments merged into one contract do not provide for attorney's fees.

The foregoing is respectfully submitted.

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I CERTIFY that I mailed two (2) copies of the foregoing REPLY BRIEF OF DEFENDANT-APPELLANT to Wayne G. Petty of Moyle and Draper, 600 Deseret Plaza, Salt Lake City, Utah 84111, Attorneys for Plaintiff-Respondent, this 31st day of March, 1978, postage prepaid.

RANDALL BUNNELL