1988

Zion's First National Bank, a National Association v. Barbara Jensen Interiors, Inc., Lowell N. Jensen and Barbara W. Jensen : Unknown

Utah Court of Appeals

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DOCKET NO. 880207

UTAH COURT OF APPEALS

ZIONS FIRST NATIONAL BANK, a National Association,	:	
Plaintiff-Respondent,	:	Docket No. 880207-CA
v.	:	
BARBARA JENSEN INTERIORS, INC., LOWELL N. JENSEN and BARBARA W. JENSEN,	:	Argument Priority 14B
Defendants-Appellants.	:	

RESPONDENT'S SUPPLEMENTAL BRIEF

An appeal from a Final Order of Judge Raymond S. Uno

Judge of the Third District Court

Salt Lake County, State of Utah

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Pursuant to leave of court granted during oral argument in the above-referenced appeal, respondent Zions First National Bank hereby submits this supplemental brief to address the relevance to this case of this Court's holding in Brown v. Brown, 744 P.2d 333 (Utah App. 1987). For the reasons set forth below, respondent submits that the holding of Brown is not directly applicable to this case but that its reasoning supports enforcing the settlement agreement here.

In Brown, this Court reversed a lower court order modifying a divorce decree pursuant to a purported stipulation, which was subsequently disputed by the plaintiff. That holding is not applicable here for two reasons. First, in refusing to enforce the stipulation, this Court wrote that

> [f]or a stipulation to be binding, agreement by the parties must be evidenced by a signed writing which would satisfy the Statute of Frauds or the agreement must be stated in court on the record before a judge [pursuant to Utah R. Prac. D. & C. Ct. Rule 4.5(b)].

Brown at 335.[1] At issue in Brown was enforcing a stipulation, a particular procedural device, and not settlement agreements generally. While the dissent in Brown focused on that distinction, the majority did not address whether its holding

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[1]In the Brown case, the Statute of Frauds was at issue because the contract in question involved performance greater than one year in length. Since neither the duration or the subject matter of the settlement agreement at issue here falls within the statute of frauds, the settlement agreement is enforceable even though not in writing.

extended to settlement agreements. Moreover, the majority relied expressly on Rule 4.5(b),[2] which applies by its terms only to stipulations and requires that such stipulations be a signed writing or, if oral, entered into before the court. That focus and reasoning necessarily restricts the Brown holding to stipulations, and does not extend to settlement agreements.

Indeed, the Utah Supreme Court has held that summary enforcement of settlement agreements generally is appropriate even though the agreement was never reduced to writing, e.g., Murray v. State, 737 P.2d 1000,1001 (Utah 1987), or was not entered into before the court, e.g., Tracy Collins Bank v. Travelsted, 592 P.2d 605, 608 (Utah 1979). Thus, the stricter rules for enforcement of stipulations identified in the Brown majority are limited in their applicability and, if extended to settlement agreements, would be at odds with Utah Supreme Court decisions.

Second, in Brown the plaintiff herself never verbally assented to the settlement. The majority found that fact crucial, concluding that "[s]ilence cannot be construed to be consent in these circumstances." Brown at 335. In this case, however, the uncontroverted evidence is that the Jensens each expressly assented to the settlement. See Affidavit of Donald M. Bennett,

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[2]Utah R. Practice D. & C. Ct. 4.5(b) requires that "[n]o orders, judgments or decrees upon stipulation shall be signed or entered unless such stipulation is in writing, signed by the attorneys of record for the respective parties and filed with the clerk, provided that the stipulation may be made orally in open court."

¶ 15. That express verbal agreement to the settlement distinguishes this case from Brown and indeed because the Brown court found that element crucial, its logic would presumably support enforcement of the settlement agreement here.

For these reasons, the Brown case does not change the clear analysis which supports the trial judge's conclusion.

DATED this 27TH day of March, 1989.

RAY, QUINNEY & NEBEKER

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CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of March, 1989, a true and correct copy of Respondent's Supplemental Brief was mailed, postage prepaid, to the following:

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