

1988

# Genrich Yanovsky and Raisa Yanovsky v. Allison L. Nowels and Eleanor S. Nowels : Brief of Respondent

Utah Court of Appeals

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BRIEF

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880232-CA

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IN THE COURT OF APPEALS OF THE STATE OF UTAH

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GENRICH YANOVSKY and )  
RAISA YANOVSKY, his wife, )

Plaintiffs/Respondents )

vs. )

ALLISON L. NOWELS and )  
ELEANOR S. NOWELS, his wife, )

Defendants/Appellants )

Case No. 880232-CA

Priority No. 14b

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BRIEF OF RESPONDENTS

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Appeal from an Order and Judgment entered against Appellants  
by the Third Judicial District Court  
of Salt Lake County, State of Utah

---

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	)	
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RESPONDENTS' BRIEF

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JURISDICTIONAL STATEMENT

This Court has jurisdiction to hear this matter pursuant to the provisions of §78-2a-3(2)(h), Utah Code Annotated, 1953, (1987 supp.) and Rule 3 of the Rules of the Utah Court of Appeals.

NATURE OF THE CASE

This is an appeal from a judgment entered by the trial court against Appellants in a declaratory judgment action brought by the Respondents wherein they sought judicial determination of the rights of the parties under an agreement executed by the parties on September 5, 1985.

#### ISSUES PRESENTED FOR REVIEW

1. Whether the trial court committed a reversible error in interpreting the agreement entered into by the parties on September 5, 1985.

2. Whether the trial court committed reversible error when it ruled that the principal obligation, secured by a Trust Deed Note, was reduced by \$30,000.00 when Respondents made a balloon payment to Appellants pursuant to the September, 1985, agreement and that Respondents' obligation to pay interest will be only on the unpaid balance after the reduction of \$30,000.00 on the principal as of September 5, 1985.

#### STATEMENT OF FACTS

On or about February 3, 1982, the Respondents purchased certain real property located at 1230 East Breckenridge Drive, Salt Lake City, Utah, from Appellants.(R. 6-8) On that date Respondents also executed a Trust Deed Note whereby they promised to pay to Appellants the sum of \$55,700.00 as payment for said property.(R.7) This sum was to be paid in monthly installments of \$489.00 per month beginning on April 1, 1982, and ending on October 1, 1989. On October 1, 1989, the entire balance, including accrued interest will be due and payable by Respondents. The Trust Deed Note further provides for a balloon payment of \$30,000.00 which was to be paid on March 1, 1987.(R.7)

In September, 1985, Appellants, in need of money, approached Respondents to propose an earlier payment date of the \$30,000.00 balloon payment. In consideration for the early payment, Appellants offered to reduce the payment from \$30,000.00 to \$25,000.00.(R.12)

On September 5, 1985, Appellants prepared an agreement memorializing the parties' understanding. That agreement provided as follows:

"WHEREAS, Genrich Yanovsky and Raisa Yanovsky owe a payment of \$30,000.00 on the second trust deed dated February 3, 1982, to Allison L. Nowels and Eleanor S. Nowels, on March 1, 1987, the Yanovskys agree to pay the Nowels \$25,000.00 on September 5, 1985, in consideration for a \$5,000.00 reduction of the \$30,000.00 payment due March 1, 1987.

It is further agreed by both parties to the original contract that the payment schedule starting with payment number 041 due September 1, 1985, will remain in force exactly as originally written with no further changes or exceptions."  
R.12) [Emphasis added]

Subsequent to the execution of the September 5, 1985, agreement, a dispute arose between the parties concerning the application of the balloon payment and monthly payments toward interest and the principal balance. On April 30, 1986, Respondents filed the underlying action seeking judicial determination of the parties' rights and obligations pursuant to the Trust Deed Note of February 3, 1982, and the September 5, 1985, agreement.(R.2-5)



Defendants filed a Motion for Summary Judgment with the trial court. (R.45-46) That court, after considering the arguments of the parties and the evidence submitted by the parties, entered an Order and Judgment on December 4, 1987. (R.108-110) By entering that order and judgment, the trial court ruled that Respondents' payment of \$25,000.00 reduced the principal amount owing to Appellants by \$30,000.00 as of September 5, 1985. The trial court further ruled that Respondents' obligation to pay interest will be only on the unpaid principal, after the reduction as of September 5, 1985. (R.110)

Appellants filed their Notice of Appeal on January 4, 1988. (R. 113-114)

#### SUMMARY OF ARGUMENT

The parties in this case do not significantly disagree on the applicable law, nor is there a significant disagreement of facts. In this case, Respondents executed a Trust Deed Note wherein they agreed, among other things, to pay Appellants a \$30,000.00 balloon payment. That payment was payable on March 1, 1987. In September, 1985, Appellants approached Respondents to request an earlier payment date. In consideration for such earlier payment, Appellants offered to reduce the balloon payment from \$30,000.00 to \$25,000.00.

On September 5, 1985, the parties memorialized their verbal agreement by executing a written agreement prepared by Appellants. This written agreement also reflected the parties' intent to abide by their original "payment schedule". Appellants have taken the position that "payment schedule" actually means "amortization schedule". The net result of Appellants' position is that Respondents would continue to make payments, both interest and principal, as though no lump sum payment had been made by Respondents. This is not, however, what the parties had agreed upon. Why would Respondents agree to pay Appellants \$25,000.00 unless they received credit for the payment?

The "United States Rule" requires that the payment made by Respondents is to be applied toward reducing the interest due. If that payment exceeds the interest, the surplus goes toward reducing the principal, with subsequent interest to be computed on the balance of the principal remaining due.

This Court, just as the trial court did, must apply the "United States Rule". Unless this Court applies that rule and affirms the trial court's Order and Judgment, the clear and obvious intent of the parties, expressed in their September 5, 1985, agreement, will be defeated. The express intent was that by making an early payment Respondents would receive a \$5,000.00 reduction in their obligation. Appellants are asking this Court to take away that deduction.

## ARGUMENT

### POINT I

#### THE APPLICATION ON THE "UNITED STATES RULE" REQUIRES THAT PAYMENTS SHOULD FIRST BE APPLIED TO INTEREST DUE.

In the absence of an agreement or statutes the "United States Rule" is applied to cases involving partial payment of an interest-bearing debt. This rule provides:

"the payment should be first applied to the interest. If the payment exceeds the interest, the surplus goes towards discharging the principal, and the subsequent interest is to be compounded on the balance of the principal remaining due." 45 AmJur 2d. Interest and Usury, Section 99, pages 88-89,

Though there appear to be no Utah cases which have applied the "United States Rule", several sister states have applied it. Wortman v. Sun Oil Company, 690 P.2d 385, 391 (Kan. 1984). City and County of Honolulu v. Kam, 402 P.2d 683, 693 (Haw, 1965).

Applying the "United States Rule" to the instant case, the payment made by Respondents on September 5, 1985, must first be applied to the interest due. If that payment exceeds the interest due, the surplus must be applied toward reducing the principal. Subsequent interest must then be computed on the balance of the interest due. This is what the trial court ruled.

Appellants have insisted that the interest payment, as set forth in the amortization schedule, must be continued without

giving Respondents credit for the payment made on September 5, 1985. If Appellants are allowed to do this, then Respondents will not receive a \$5,000.00 reduction, but will, at best, receive a nominal benefit. This is not what the parties intended. The parties clearly intended that Respondents receive a \$5,000.00 reduction in their debt. To further this intent this Court must affirm the trial court's order.

POINT II

CONTRACTS ARE TO BE CONSTRUED IN LIGHT OF THE  
REASONABLE EXPECTATIONS OF THE PARTIES AS  
EVIDENCED BY THE PURPOSE AND THE LANGUAGE OF THE  
CONTRACT.

The Utah Supreme Court has held that a contract is "to be construed in light of reasonable expectations of the parties as evidenced by the purpose and language of the contract." Nixon and Nixon, Inc. v. John New & Associates, 641 P.2d 144, 146 (Utah 1982). Dubois v. Nye, 584 P.2d 823 (Utah 1978).

The expectations or intent of the parties is to be ascertained from the content of the contract. Utah Valley Bank v. Tanner, 636 P.2d 1060, 1061 (Utah 1981); Stranger v. Sentinel Security Life Insurance Company, 669 P.2d 1201, 1205 (Utah 1983).

In the instant case, Appellants approached Respondents about prepaying the \$30,000.00 due on March 1, 1987. In consideration for such prepayment, Appellants agreed to a reduction of Respondents' obligation by \$5,000.00. The clear intent and expectations of the parties was quite obvious:

Appellants received a \$25,000.00 payment a year and a half before such payment was due, and Respondents were to receive a \$5,000.00 reduction in their obligation.

Appellants, after receiving their payment, refused to honor the agreement by continuing to hold Respondents to the same amortization schedule. Stated more simply, Appellants attempted to continue collecting the interest as though Respondents had not made the \$25,000.00 payment.

The parties continued, as agreed, to abide by the "payment schedule". Appellants insisted, however, that the reference to the "payment schedule" in their September 25, 1985, agreement is a reference to the "amortization schedule".

To accomplish what the parties obviously intended and expected, this Court must affirm what the trial court found and hold that Appellants cannot collect interest on the obligation without giving credit for the payment made by Respondents on September 5, 1985.

#### CONCLUSION

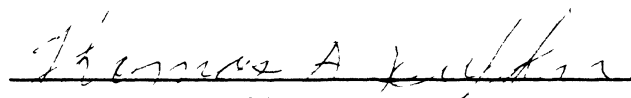
Absent any agreement or statute to the contrary, this court must apply the "United States Rule". The application of this rule requires that the payment made by the Respondents on September 5, 1985, must first be applied to interest due and the surplus will be used to reduce the principal.

To allow Appellants to collect interest as though Respondents had not made the September 5, 1985, payment would defeat the clear intent and expectations of the parties when they entered into the September 5, 1985, agreement. Accepting Appellants' position, that they are allowed to collect interest as though Respondents did not make the payment on September 5, 1985, destroys the consideration for which Respondents bargained and defeats what the parties intended.

Based on the foregoing, it is respectfully submitted that this Court must affirm the trial court's Order and Judgment.

Dated this 30 day of June, 1988.

JENSEN, DUFFIN, DIBB & JACKSON

  
Thomas A. Duffin  
Attorney for Respondents

MAILING CERTIFICATE

I certify that I mailed 4 copies of the foregoing Brief to the following parties by placing a true copy thereof in an envelope addressed to:

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postage prepaid, this \_\_\_\_\_ day of June, 1988.

