1978

Bekins Bar V Ranch v. Utah Farm Production Credit Ass'n : Brief of Respondent

Utah Supreme Court

Ralph J. Hafen; Attorney for Appellant;
Lowell V. Summerhays; Robinson, Guyon, Summerhays & Barnes; Attorneys for Respondents;

IN THE SU

OF THE S

BEKINS BAR V RANCH
a Utah Corporation,

Plaintiff-
Appellant,

vs.

UTAH FARM PRODUCTION
CREDIT ASSOCIATION,

Defendant-
Appellee.

Appeal from an
District Court for Sa
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IN THE SUPREME COURT

OF THE STATE OF UTAH

BEKINS BAR V RANCH a Utah Corporation,

Plaintiff-Appellant,

vs.

UTAH FARM PRODUCTION CREDIT ASSOCIATION,

Defendant-Appellee.

No. 15563

APPELLEE'S BRIEF

Appeal from an order of the Third Judicial District Court for Salt Lake County, State of Utah
Honorable David B. Dee

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AUTHORITIES CITED

THE MOTION TO DISMISS WAS SUFFICIENT ON ITS FACE

As a matter of law, no party is required to allege any subsection of Rule 12(b):

> "...the following defenses may at the option of the pleader be made by Motion..." (Emphasis added) Rule 12(b) Utah Rules of Civil Procedure

Nor does it state anywhere in that Rule that a party that alleges one of the optional defenses need include the precise wording of the subsection as set forth in the Rule.

Defendant intended to, and did, raise the defense of failure to state a cause of action under Rule 12(b)(6). In its Motion to Dismiss, Defendant alleged as follows:

> "1. Records kept in the ordinary course of business prove that there was no over-statement of amount due;
>
> 2. Any error made in the records on notes executed prior to the 1973 promissory note and its renewal complained of which might have resulted in an overstatement cannot be used as a basis for a complaint because:
>
> a. Any such allegation was not pleaded in the complaint and,
>
> b. Any action thereon would be barred by the Statute of Limitations;
>
> 3. The inception amount of $527,605.00 as stated on the 1973 Promissory Note was never questioned by the Plaintiff, and therefore must be assumed to be correct.
>
> 4. The Uniform Commercial Code prohibits any subsequent complaint regarding amount after payment where the payee has changed position;

NATURE OF THE CASE

This case is a contract action, based on a promissory note, which claimed, retrospectively, that the "payoff" amount exceeded the monies actually due.

DISPOSITION BELOW

The trial court, as permitted under Rule 12(b) U.R.C.P., properly treated Defendant-Appellee's (hereinafter referred to as "Defendant") Motion to Dismiss as one for Summary Judgment and dismissed the case.

STATEMENT OF FACTS

To clarify the statement of facts made by Plaintiff-Appellant (hereinafter referred to as "Plaintiff"), Defendant wishes to add the following:

1. The original indebtedness of Plaintiff to Defendant was evidenced by a promissory note dated May 10, 1973, and was in the amount of $527,605.00;

2. On March 8, 1977, attorneys for Utah Farm Production Credit Association mailed certain instructions relating to the pay-off figure of $345,437.57 plus per diem interest occurring thereon in the amount of $71.57 for each day after March 1, 1977.

ARGUMENT

I

5. An accord and satisfaction occurred by the Plaintiff, and by the release of the mortgage by Defendant."

Defendant clearly was moving to dismiss upon the grounds that the Plaintiff had failed to state a claim upon which relief could be granted. The Defendant considered this implication so clear that it would have been redundant to cite the exact language from the Rule. The Court agreed and so ruled. This defense is so basic that several Courts have permitted the defense to be made even on a second motion:

> "After the Motion to Dismiss for improper venue has been disposed of adversely to him, the Defendant should answer and Rule 12 does not authorize him to make a second motion, prior to answer, to dismiss for failure to state a claim; although since the objection is so basic and is not waived, the Court might properly entertain the motion if convinced that it is not interposed for delay and that the disposition of the case on the merits can be expedited by so doing (Emphasis added)."
> Moore's Federal Practice, Volume 2A, ¶12.22, p. 2444 (Citations omitted)

Defendant alleged this defense, and a ruling that Defendant would have to make a second motion would indeed create a delay in a case which has already been disposed of on the merits.

II

THE MOTION WAS PROPERLY TREATED AS A SUMMARY JUDGMENT

The memorandum decision dismissing Plaintiff's complaint states as follows:

"This Court grants the Defendant's Motion to Dismiss with the exception of the prayer for attorney's fees and costs in bringing this Motion."

Memorandum Decision
October 26, 1977

The committee notes on Rule 12(b)(6) of the Federal Rules states:

"The committee entertains the view that on Motion under Rule 12(b)(6) to dismiss for failure of the complaint to state a good claim, the Trial Court should have authority to permit the introduction of extraneous matter, such as may be offered on a Motion for Summary Judgment, and if it does not exclude such matter, the Motion should then be treated as a Motion for Summary Judgment and [illegible] in a manner and on the conditions [illegible] in Rule 56 relating to Summary Judgments, and, of course, in such a situation, when the case reaches the Circuit Court of Appeals, that Court should treat the Motion in the same way."

Moore's Federal Practice
Vol. 2A, ¶12.01[9], p. 2214

The Utah Rule of Civil Procedure specifically states:

"If, on a Motion asserting the defense numbered (6) to dismiss for failure of a pleading to state the claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the Court, the Motion shall be treated as one for Summary Judgment and disposed of as provided in Rule 56..."

Rule 12(b) U.R.C.P.

Defendant has already established that the intention was that the Motion to Dismiss claim the Rule 12(b)(6) ground of failure to state a cause of action and the District Court properly understood and treated that Motion accordingly.

As a matter of law, the Second Circuit Court, at least, has stated:

> "In dealing with such situations the Second Circuit Court has made the sound suggestion that whatever its label or original basis, the Motion may be treated as a Motion for Summary Judgment and disposed of as such.
> A complaint can be dismissed on Motion if clearly without any merit; and this one of merit may consist in an absence of law to support a claim of the sort made, or facts sufficient to make a good claim, or in the disclosure of some fact which will necessarily defeat the claim."
> Moore's Federal Practice (2d ed) ¶12.08 citing DeLoach v. Crowley's Inc., 5 Cir, 128 F2d 378,380.

Plaintiff, in citing Hill v. Grand Central Inc., 477 P.2d 150, cited language which supports the Defendant's position. Although the fact situation was far removed from the case at bar, the trial court held:

> "True it is that when a Motion to Dismiss is accompanied by affidavits, it may be treated as a Motion for Summary Judgment."
> Hill, supra at 151

Defendant submitted two affidavits with its' Motion to Dismiss. Therefore, Defendant's Motion was properly treated as one for Summary Judgment.

III

PLAINTIFF HAS NOT BEEN DENIED HIS DAY IN COURT

The trial court examined Plaintiff's complaint in a light most favorable to the Plaintiff and found, that as a matter of law, and in view of the undisputed facts on both sides, Plaintiff's case failed to state a cause of action. Plaintiff had ample opportunity to present opposing

affidavits and to argue against the Defendant's motion in open court. Plaintiff failed to submit any affidavits and at any rate, did not persuade the trial court to rule in his favor.

Regarding such circumstances, Justice Crockett said:

> "We agree that the mere privilege of filing an action only to be summarily rejected and turned out of court may not seem to give much substance to that constitutional assurance to one who seeks an adjudication on and redress for a wrong he claims to have suffered. Now [illegible] the party so accused likewise has rights to be asserted and protected. Among these are the right to move for a summary judgment, which challenges the contentions of the adverse party, saying in effect: even if the facts are as you claim, they do not establish any legal basis for recovery.
>
> When this is done, it is not to be questioned that, if upon analysis of the claims made, it appears to the court that even if they are true, the party would not be entitled to prevail, the summary judgment should be granted in order to save the time, trouble and expense of a trial which could only arrive at that same conclusion."
>
> Butler v. Sports Haven 563 P.2d 1245

IV

CONCLUSION

The trial court did carefully examine all the pleadings and reached the decision that Plaintiffs' complaint did not state a cause of action. For this, and for all the reasons heretofore stated in this brief,

together with the proposition that the trial court should be accorded great weight and discretion in their decisions, Defendant submits that the decision dismissing the case should be sustained.

Dated this 15th day of March, 1978.

Respectfully submitted,

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MAILING CERTIFICATE

I hereby certify that I delivered a true and correct copy of the foregoing Defendant-Appellee's brief to Ralph J. Hafen, attorney for Plaintiff-Appellant, 924 Kearns Building, Salt Lake City, Utah 84111, this ____day of March, 1978

_____