

1978

Craig Mecham and John Hedman v. Myron L. Benson and Ellen Benson : Reply Brief

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

CRAIG MECHAM and
JOHN HEDMAN,

Plaintiffs - Appellants,

vs.

MYRON L. BENSON and
ELLEN BENSON,

Defendants - Respondents.

Case No.

15649

REPLY BRIEF

Appeal from District Court of
Salt Lake County, Utah
Honorable James S. Sawaya

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RESPONDENTS

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Clerk, Supreme Court, Utah

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REPLY BRIEF

I

ANSWER TO INTERROGATORIES WAS NOT A WAIVER OF THE EXISTENCE OF THE CORPORATE ENTITY AND LIMITED LIABILITIES OF APPELLANTS.

The answers to interrogatories noted by the respondents in their brief were misinterpreted by defendants counsel and were never intended as a binding consent to personal liability to the defendant for corporate debts or acts. The questions were ambiguous in the context of this case. The plaintiffs' answer was that they were bound individually on the contract in that they were bound to the bank and therefore were suing as individuals to recover money expended as guarantors. They were also bound to the defendants as a corporation since they remained bound to the defendants as agents of the corporation.

Plaintiffs' cause of action was personal and the corporation

had no interest in such Complaint for the return of money spent for deficiencies.

The terms of the Complaint referring to plaintiffs' acts in contracting with the defendants is referring to their acts as agents of the corporation and such pleadings should not be misconstrued to bar the plaintiffs from asserting the corporate defense.

II

THE ISSUE OF CORPORATE OR PERSONAL LIABILITY WAS RAISED AT TRIAL

The record shows that the corporate nature of the transaction was very clearly before the Court and it was error to permit the judgment to be entered against the plaintiffs as individuals seeking recovery of personal expenses.

At pages of the transcript 44 through 47 the record shows:

Q Did Majestic Mobile Homes, Inc. sell this contract to the Benson's.

A. ...Yes.

Q. Well, was you (sic) dealing with the Bensons as individuals or as a corporation.

A. We were dealing with the Bensons as a corporation.

Q. (By the Court) Why wasn't the corporation named as the plaintiff in this matter.

A. The reason was they ceased to do business and they were doing business now as individuals in another capacity. Rather than sue on the contract as a corporation they sued as individuals since as a different entity they had to make up the payments.

Q. But you and I can agree that this debt was incurred, this

home was sold by -- by Mobile --- Majestic Mobile Homes, Incorporated?

A. Yes, it was.

Q. And when you signed you signed as an officer of the corporation?

A. That's correct.

Q. And not as Mecham personally?

A. That's correct.

See also TR-123 and 128.

III

THE ELEMENTS OF FRAUD WERE NOT PROVED AT TRIAL.

In their Counterclaim the defendants allege that there were latent defects that were not revealed to them by the plaintiffs.

The evidence is repleat with examples of the defendants admissions that the trailer had leaks, cracks, unlevelled floors, broken windows and dishwasher and other visible defects at the time of their initial inspection, TR-12, 13, 97, 106-109.

The plaintiffs were asked to repair items which they admit were repaired. TR-115.

The home was represented to have been a demonstrator that had been shown for some time and this defendants admit. TR-17-18. Whether the home was "new" or "used" is a question of terminology. Both parties knew what the facts were: it was new; i.e. never lived in; although used; i.e. shown as a demonstrator.

The contract was allegedly filled in outside of the defendants presence but even assuming the jury found this were true the terms were filled in the same as they understood them to be and the defen-

dants lived by said terms for 7-8 months. TR-20. Furthermore, they admit in their testimony that they consented to this later filling in of the contract (TR-16, 51-52, 79-83). They were certainly not defrauded in that respect.

CONCLUSION

Absent a clear showing that the plaintiffs were fraudulent in their dealings with the defendants there was no evidence to justify disregard of the corporate entity and the judgment should be remanded on this issue or dismissed.

Respectfully submitted this ____ day of _____, 1978.

STEVEN F. ALDER

MAILING CERTIFICATE

I hereby certify that a true and correct copy of the foregoing Reply Brief was mailed to Respondents' attorney, Mark S. Miner, at 525 Newhouse Building, Salt Lake City, Utah 84111, this ____ day of _____, 1978.

STEVEN F. ALDER