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Garth Youd v. Richard B. Johnson and Howard Lewis & Peterson, a partnership : Response to Petition for Rehearing

Utah Court of Appeals

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BRIEF

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IN THE COURT OF APPEALS
OF THE STATE OF UTAH

* * * * *

GARTH YOUD,)	
)	
Plaintiff-Appellant,)	ANSWER TO PETITION
)	FOR REHEARING
vs.)	
)	
RICHARD B. JOHNSON and HOWARD,)	
LEWIS & PETERSON, a)	
partnership,)	Case No. 880431-CA
)	
Defendants-Respondents.)	

APPEAL FROM THE JUDGMENT OF THE
FOURTH JUDICIAL DISTRICT COURT
OF UTAH COUNTY

The Honorable George E. Ballif, District Judge

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COURT OF APPEALS

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Plaintiff-Appellant Garth Youd submits this Answer to Petition for Rehearing pursuant to Rule 35, Rules of the Utah Court of Appeals, and the invitation of the Clerk of the Utah Court of Appeals dated January 29, 1990.

BACKGROUND

Garth Youd brought this action to recover for respondents' negligent prosecution of an action on behalf of Youd against Zions First National Bank ("Zions"). The action against Zions was based on Zions' improper reissuance of two certificates of deposit to appellant's father, Wilford Youd, and to his daughters.

Respondents admitted their negligence in the representation of appellant, but disputed the issue of damages. As a result, the action focused on whether appellant would have been successful in its underlying action against Zions. Both parties moved for summary judgment, and the trial court ruled that Utah Code Ann. § 75-6-112 protects Zions from liability in the transaction as a matter of law.

Garth Youd appealed the summary judgment ruling, claiming that a material issue of fact exists as to whether Zions had reissued the \$10,000 certificate of deposit to Garth Youd before Wilford Youd's contrary instructions. Appellant also disputed the legal conclusions of the trial court, arguing that his

possession and due presentment of the \$10,000 certificate of deposit entitled him to payment pursuant to Utah Code Ann. § 70A-3-116, that Wilford Youd was wrongfully reissued the certificates of deposit because he failed to make a "proper request" as required by §§ 75-6-108 and 75-6-101, and that Zions was liable for conversion of the \$10,000 and \$15,000 certificates.

Respondents countered by arguing that the UCC did not apply because no "presentment" occurred, that Wilford Youd's request was proper, that no issue of material fact existed as to the reissuance of the \$10,000 certificate of deposit, that there was no claim for conversion because no bailment occurred, and that, even if a bailee/bailor relationship was created, Zions acted properly in following Wilford Youd's directions.

In its recently-issued opinion, this Court ruled that the UCC does not apply because the certificates were not "negotiable instruments" as defined by the UCC. The Court also concluded that the certificates of deposit were ambiguous as to whether they were joint accounts in both Garth and Wilford Youd. It was determined that Wilford Youd's intent in creating the accounts must therefore be examined. If Wilford Youd did not intend to create joint accounts, then Garth Youd's claims are groundless and it is irrelevant whether § 75-6-112 applies. If, on the other hand, the fact finder concludes that Wilford did

intend a joint account, the legal issues surrounding the reissuance of the certificates and the application of § 75-6-112 must be considered.

SUMMARY OF ARGUMENTS SUPPORTING REHEARING

Respondents now seek a rehearing, arguing that the application of Section 75-6-112 to protect Zions from liability does not depend on whether the accounts were joint or single-party accounts.

Appellant finds himself in the difficult position of agreeing with the court's decision to reverse and remand, but disagreeing with the basis for that decision. Due to our concern that remand to the lower court on the issue suggested in the Court's opinion would not result in a satisfactory lower court resolution, appellant joins respondents in seeking a rehearing. Be it noted, however, that the following reasons in support of rehearing differ greatly from those set forth by respondents:

1. Neither party on appeal disputed the factual issue of whether the certificates of deposit were ambiguous as to the nature of their ownership. Appellant has consistently claimed that the certificates are clearly joint accounts because they are payable to "Wilford Youd or Garth Youd." Respondents also relied on the factual premise of joint ownership in their argument for the application of § 75-6-112, which only applies to multiple-

party accounts. Nonetheless, the Court determined that nothing on the face of the certificates reveals joint ownership and that they are therefore ambiguous. Consequently, the Court has remanded the action for a determination of Wilford Youd's intent when he created the accounts. Though we commend the Court's reversal of the lower court's erroneous summary judgment ruling, we respectfully urge the Court to reconsider the basis for the reversal consistent with the disputed facts raised on appeal, i.e., whether the \$10,000 certificate of deposit was reissued as a single-party account in Garth Youd's name. Even if the Court determines that there is no dispute as to the reissuance of the \$10,000 certificate, we would ask that the Court evaluate the flaws in the lower court's legal conclusions which were raised on appeal.

2. The Court's conclusion that Wilford Youd's intent is critical in determining the applicability of § 75-6-112 undermines the expressly-worded purpose of §§ 75-6-108 and 75-6-112, which is to discharge financial institutions from having to inquire as to the beneficial ownership of multiple-party accounts. A remand to the lower court for the purpose of analyzing intent will undoubtedly result in a second appeal.

3. Plaintiff seeks review of the lower court's legal conclusion that § 75-6-112 applies to protect Zions from

liability under the facts of this case. Plaintiff reasserts the arguments briefed and argued in this appeal against the present application of § 75-6-112. Appellant argues in his Brief that the \$10,000 certificate was duly reissued in Garth Youd's name alone at his request, thus creating a single-party account. Brief of Appellant, p. 20. Zions' subsequent reissuance of both certificates at the request and in the name of Wilford Youd was therefore not a payment on a multiple-party account, and § 75-6-112 does not control.

4. Again, relying on the undisputed fact that the certificates of deposit were joint accounts of which Garth Youd was a payee, appellant's entrustment of the certificates to Zions gave rise to a bailee/bailor relationship which obligated Zions to exercise due care in complying with appellant's instructions. Zions breached that duty and clearly repudiated appellant's ownership rights by extinguishing appellant's ownership interest in both certificates and replacing them with certificates in the names of Wilford Youd and his daughters. Such actions support appellant's claims of negligence and conversion against Zions.

ARGUMENTS

I. THE BASIS FOR THE COURT'S REMAND IS LEGALLY AMISS AND BEYOND THE SCOPE OF THE COURT'S REVIEW.

Plaintiff feels it necessary to respectfully question the grounds upon which the Court reversed and remanded the lower court's summary judgment ruling. We hesitate to dispute a result sought on appeal, but the instructions accompanying the Court's reversal and remand will undoubtedly cause need for a second appeal and further expense if not presently reevaluated. Plaintiff seeks a rehearing while stressing his position that other very tenable grounds for reversal exist as set forth below and in the Brief of Appellant.

Plaintiff questions the Court's remand on scope of review grounds and legal grounds.

A. The Factual Issue Upon Which the Court Reversed and Remanded the Case Was Not Disputed by the Parties to the Appeal.

Rule 56, Utah Rules of Civil Procedure, provides for summary judgment if "no genuine issue as to any material fact" exists. The presence of a dispute between the parties as to a material fact disallows the granting of summary judgment. Bill Brown Realty, Inc. v. Abbott, 562 P.2d 238 (Utah 1978). It follows that when a fact is not disputed by the parties, it cannot serve to defeat summary judgment.

The court concluded that the certificates of deposit were ambiguous as to ownership, thus requiring a factual inquiry into Wilford Youd's intent when he created the accounts. However, both parties have conceded that the certificates were joint accounts. Throughout this action, defendants have relied almost exclusively on Utah Code Ann. § 75-6-112, which applies to protect financial institutions from liability for payment to a party of a multiple-party account. Respondents' Brief on this very appeal sets forth a separate argument stressing the fact that the certificates are joint accounts under Utah law. Brief of Respondents, p. 10.

Appellant has also consistently argued that the certificates are clearly joint accounts, as evidenced by the fact that they are payable to "Wilford Youd or Garth Youd."

The parties' summary judgment motions were an attempt to get beyond potential factual disputes and focus on the legal issues in this case. It became apparent from those motions that the parties could not agree on the factual issue of reissuance, but no dispute arose as to the joint ownership of the accounts. The Court's remand on the "intent" issue will require unnecessary litigation concerning undisputed facts and delay consideration of the truly disputed factual and legal issues in this case. See

Reliable Furn. Co. v. Fidelity & Guar. Ins., 398 P.2d 685 (Utah 1965).

B. An Analysis of "Intent" In Determining the Applicability of Section 75-6-112 Undermines the Express Purpose of the Statute to Avoid Such an Inquiry.

The Court's instructions on remand to determine Wilford Youd's intent in establishing the accounts creates a disturbing circular argument and undermines the purpose of the statute which seeks interpretation in this action.

Utah Code Ann. § 75-6-108 states that:

Financial institutions may enter into multiple-party accounts to the same extent that they may enter into single-party accounts. Any multiple-party account may be paid, on request, to any one or more of the parties. A financial institution shall not be required to inquire as to the source of funds received for deposit to a multiple-party account, or to inquire as to the proposed application of any sum withdrawn from an account, for purposes of establishing net contributions.

(Emphasis added). Section 75-6-112 provides in relevant part:

Payment made pursuant to Section 75-6-108 . . . discharges the financial institution from all claims for amounts so paid whether or not the payment is consistent with the beneficial ownership of the account as between [the] parties. . . .

(Emphasis added).

The express purpose of these provisions is to allow financial institutions to pay out funds to one party of a

multiple-party account without having to be concerned whether the withdrawing party is the beneficial owner of the funds. In other words, if an account is a joint account on its face, the bank may pay the funds to either party to the account without inquiring into the intent of the party who created the account.

As suggested earlier, both parties have conceded that the certificates of deposit were jointly owned by Wilford and Garth Youd. The Utah Probate Code defines joint account as "an account payable on request to one or more of two or more parties whether or not mention is made of any right of survivorship." Utah Code Ann. § 75-6-101(4) (1975). The certificates included all the language necessary, or even possible, to indicate joint ownership: "Payable to Wilford Youd or Garth Youd." Under § 75-6-101(4), there is no ambiguity whatsoever in determining from the face of the certificates whether the accounts were jointly owned. Again, neither party disputes this fact.

The Court's opinion directs the trial court to analyze Wilford Youd's intent in creating the accounts in order to determine whether they are joint accounts, and thus subject to §§ 75-6-108 and 75-6-112. However, this suggestion appears to ignore the express purpose of these provisions, i.e., to eliminate the duty of financial institutions to inquire into the beneficial ownership and source of funds of such accounts. By notice

of the Court's published opinion, the duty to inquire into the intent of the parties has been revitalized whenever the account does not expressly state that it is owned jointly. It is no longer enough to meet the requirements of a joint account set forth in § 75-6-101(4). We respectfully submit that the Court's opinion undermines the purpose of section 75-6-112 and, as claimed by defendants, removes the statutory shield of liability provided to banks by the provision.

II. THE COURT'S OPINION DID NOT CONSIDER THE ONLY DISPUTED ISSUE OF MATERIAL FACT RAISED BY APPELLANT, I.E., WHETHER THE \$10,000 CERTIFICATE OF DEPOSIT WAS REISSUED TO GARTH YOUNG AS A SINGLE-PARTY ACCOUNT.

The Court's opinion did not discuss the disputed factual issue raised by appellant on appeal. Appellant argues that there was no resolution in the lower court of the issue of whether Zions followed Garth Young's request and reissued the \$10,000 certificate in his name alone. This fact is critical in determining the applicability of § 75-6-112 to protect Zions from liability. If the certificate was reissued in Garth's name alone as requested, then § 75-6-112 would not apply to protect the bank for payment from the reissued single-party account. Zions would thus be liable for its subsequent reissuance of the certificate to Wilford Young, who would no longer be a party to the account.

There was contradictory deposition testimony as to whether the \$10,000 certificate was reissued pursuant to Garth Youd's request. As cited in appellant's Brief, one of Zions' employees believed that the \$10,000 certificate was reissued upon Garth's request. Until this dispute is properly considered by the fact finder, no determination can be made as to whether § 75-6-112 applies.

III. THE COURT SHOULD CONSIDER THE LEGAL ISSUE OF WHETHER WILFORD YOUNG'S "REQUEST," AS DEFINED BY § 75-6-101(12), WAS PROPERLY MADE SO AS TO WARRANT ZIONS' PROTECTION FROM LIABILITY UNDER § 75-6-112.

Appellants' Brief also sought review of the lower court's legal conclusion that § 75-6-112 would apply despite Zion's failure to conform to the statutory requirements of that provision. It is appellant's argument that this liability shield statute does not apply unless Wilford Youd made a "proper request" for payment under the terms of the certificates. The lower court apparently felt that this inquiry was not necessary to determine the application of §§ 75-6-108 and 75-6-112.

Revisiting Argument II, Point II, of Appellant's Brief, § 75-6-108 provides that "[a]ny multiple party account may be paid, on request, to any one or more of the parties" (emphasis added). Section 75-6-101(12) defines the term "request:"

"Request" means a proper request for withdrawal, or a check or order for payment, which complies with all conditions of the account, including special requirements concerning necessary signatures and regulations of financial institutions . . .

(Emphasis added.)

In light of the above provisions, Section 75-6-112 does not provide protection to a financial institution which complies with the request for withdrawal of funds that is not made according to the terms of the account. The terms of the two certificates of deposit at issue are listed on the face of each certificate. According to these terms, for payment to be made, the certificates must be 1) presented to Zions; 2) surrendered to Zions; and 3) properly endorsed. It is undisputed that Wilford Youd's "request" consisted of a telephone conversation with a Zion's employee wherein he orally requested that Garth Youd's name be removed from the certificates and be replaced by his names and the names of his two daughters. Wilford Youd did not present or surrender the certificates to Zions, nor did he endorse either of the certificates. Zions followed Wilford Youd's instructions despite their clear noncompliance with the payment terms of the certificates. Because Wilford Youd's request was not a "proper request" as required by § 75-6-101, Zions is not entitled to the protection of § 75-6-112.

The Court recognized the need for this inquiry in its opinion, but refrained from concluding the issue due to its remand on the factual inquiry. In light of the parties lack of dispute on the remanded issue, appellant asks the Court to rule on the issue of whether Wilford Youd's request was proper.

IV. THE COURT SHOULD CONSIDER THE LEGAL ISSUE OF WHETHER ZIONS IS LIABLE FOR NEGLIGENCE AND/OR CONVERSION OF THE CERTIFICATES OF DEPOSIT AS A RESULT OF ZION'S BAILEE STATUS.

Appellant's Brief sets forth the law relating to the formulation of a bailee/bailor relationship. Brief of Appellant, p. 31. Garth Youd's entrustment of the certificates of deposit to Zions created such a relationship. This relationship existed whether or not the \$10,000 certificate was reissued in Garth Youd's name. Zions' failure to use care to retain possession of the bailed property constitutes negligence. Zions' deliberate failure to comply with respondent's instructions was a repudiation of respondent's rights to the certificates of deposit and thus constitutes conversion. Accordingly, Zions is liable to respondent for negligence and/or conversion of both certificates of deposit.


The lower court disregarded these legal considerations in its summary judgment ruling against respondent. These legal

questions can be considered by this Court without remand to the trial court, and respondent respectfully seeks this review.

CONCLUSION

For the foregoing reasons, appellant joins with respondents in requesting that the court rehear the issues in this case.

DATED this 12 day of February, 1990.



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CERTIFICATE OF HAND DELIVERY

I hereby certify that I caused to be hand delivered four true and correct copies of the foregoing ANSWER TO PETITION FOR REHEARING to the following on this 12 day of February, 1990:

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