

1978

Instant Housing et al v. Sebrite Corporation et al : Brief of Defendant and Defendant in Intervention- Appellant

Utah Supreme Court

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SUPREME COURT OF THE STATE OF UTAH

No. 15784

INSTANT HOUSING, MARK SQUIRES
and MARGARET SQUIRES, his wife,

Plaintiffs,

vs.

SEBRITE CORPORATION and
UTAH STATE TAX COMMISSION,

Defendants and
Third Party Plaintiffs,

vs.

ALF BOSTRUM and STAKER OLSEN,

Third Party Defendants.

and

IONS FIRST NATIONAL BANK,
national banking association,

Plaintiff in Intervention and
Respondents,

vs.

LOKA AFFILIATES, INC.
(formerly SEBRITE CORPORATION)
and THE UTAH STATE TAX COMMISSION,

Defendants in Intervention and
Appellants.

FILED

JUL - 5 1978

Clerk, Supreme Court, Utah

BRIEF OF DEFENDANT & DEFENDANT IN INTERVENTION-APPELLANT

APPEAL FROM SUMMARY JUDGMENT OF THE DISTRICT
COURT OF SALT LAKE COUNTY, UTAH,
HONORABLE DAVID K. WINDER, JUDGE

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SUPREME COURT OF THE STATE OF UTAH

No. 15784

INSTANT HOUSING, MARK SQUIRE,
and MARGARET SQUIRES, his wife,

Plaintiffs,

vs.

SEBRITE CORPORATION and
UTAH STATE TAX COMMISSION,

Defendants and
Third Party Plaintiffs,

vs.

ALF BOSTRUM and STAKER OLSEN,

Third Party Defendants.

and

ZIONS FIRST NATIONAL BANK,
a national banking association,

Plaintiff in Intervention and Respondents,

vs.

TULOKA AFFILIATES, INC.
(formerly SEBRITE CORPORATION)
and THE UTAH STATE TAX COMMISSION,

Defendants in Intervention and Appellants.

BRIEF ON APPEAL

STATEMENT OF THE KIND OF CASE

to a security interest in a mobile home.

DISPOSITION IN THE LOWER COURT

The case came before the Honorable David K. Winder on Plaintiff's Motion for Summary Judgment. From Summary Judgment in favor of Plaintiff in intervention, Defendant in intervention appeals.

RELIEF SOUGHT ON APPEAL

Defendant in intervention seeks reversal of the Summary Judgment and that the case be remanded to the lower court for trial on the merits.

STATEMENT OF FACTS

Tuloka Affiliates was formerly Sebrite Corporation and for clarity, is referred to herein as "Sebrite". Sebrite is a loan service company representing various banks and lending institutions. Pursuant to a loan guarantee arrangement with Commercial Security Bank, Sebrite paid off and received title to, and possession of, the mobile home which is the subject of litigation herein.

Thereafter and prior to October 1974, the mobile home was delivered to Plaintiff Instant Housing. Instant Housing, at all relevant times prior to November 5, 1974, was one of Sebrite's agents and there is a dispute of fact as to whether the relationship continued thereafter.

On or about October 5, 1974, Plaintiffs', Mark and Margaret Squibb purchased the mobile home from Sebrite's agent, Instant Housing (T. 110-111). The mobile home was delivered and they have continuous possession thereof.

Thereafter a dispute arose between Sebrité and Instant Housing and the agency was terminated by mutual agreement. (T. 96-97)

On or about January 17, 1975, the contract between Mark and Margaret Squires and Sebrité Corporation was sent to Kenneth Rothey, attorney for Instant Housing (T. 116). Mr. Rothey was requested to either return the mobile home to inventory (3955 South Redwood Road - Mobile Home Center) or pay Sebrité and receive the title.

The mobile home was not returned nor was Sebrité paid, but rather on February 11, 1975, a new contract was made on a Zions's 1st National Bank form (T. 112-113) between House of Compacts and Squires, that contract was the assigned with full recourse to Zions and House of Compacts was paid \$14,726.74 by Zions.

Prior to February 1975, a title had been issued to Plaintiffs Squires showing Sebrité as lienholder (T.106). Additionally a UCC1 had been filed by Commercial Security Bank (T.99-100) to give notice of their security interest in the mobile home.

Thereafter a petition was filed with the State Tax Commission at Zion's instance to cancell the title issued with Sebrité as lienholder and have a new title showing Zion's as lienholder issued. After the State Tax Commission refused to act, the issue was joined herein.

ARGUMENT

The court erred in granting Plaintiff in intervention's Motion for Summary Judgment.

Zion's 1st National Bank claims it's interest in the subject mobile home based on a contract between Plaintiffs Mark F. Squires and Margaret D. Squires and House of Compacts (T.75). It is uncontroverted that Sebrite Corporation was the owner of the mobile home prior to October 5, 1974.

Therefore, unless the undisputed facts demonstrate the existence of an agency between House of Compacts and Sebrite Corporation the court should not have granted Summary Judgment in favor of Zion's.

This court has held that "agency" is the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act" American Law Institute Restatement of Agency 2d, §1, Continental Bank & Trust Company v. Taylor 384 P2d 796 at 800 (1963 Utah). Under the above definition the House of Compacts was not the agent of Sebrite. There is not a scintilla of evidence of an express agency between Sebrite and House of Compacts. Although it is not clear from the record on appeal it appears that Zions's may be claiming that House of Compacts was a subagent of Plaintiff Instant Housing, Inc.

The Record on Appeal indicates that on or after January 17, 1975, (R. 68) Instant Housing appointed House of Compacts its agent for "the purpose of handling the sale of the mobile home to Squires and financing thereof with Zions through the dealer arrangement provided

established between Zion's and House of Compacts". (R. 70)

The contention seems to be that Instant Housing had the authority to appoint House of Compacts as a subagent thereby binding the principal, Sebrite. In fact, that theory seems to be the only one on which to base a Summary Judgment for Plaintiff in intervention.

The authority to appoint a subagent must be derived from an existing agency relationship. Bloom v. Wolfe 547 P2d 934 (Colo App 1976) Clearly the existence of an agency relationship is not undisputed (R. 96-97).

Secondly, a subagency must be premised on either express or implied authority of the agent to appoint subagents. The Plaintiff in intervention has neither claimed nor offered proof of express authority. The proposition that "The authority to appoint subagents is inferred where the principal knows or has reason to know the agent employs subagents. Rommel v. New Brunswick Fire Ins. Co. 214 Minn. 251, 8 N.W. 2d 28; Consolidated Underwriters Ins. Co. v. Landers ..." Bloom v. Wolfe Restatement of Agency 2d §80 is similarly inapplicable since there is no proof whatsoever offered in support of such an inference.

Justice Crockett has stated for the Court that "We are cognizant of the values of summary judgment procedure for the purpose of saving the time, effort and expense of a trial. But as we have often said, it should be granted only when it clearly appears that there are no issues of material fact in dispute

which if resolved in favor of the adverse party would entitle him to prevail" (citing authority) University Club v. Invesco Holding Corporation, 504 P.2d 29 (1972).

The affidavits of Plaintiff in intervention do not establish the existence of an agency between Sebrite and House of Compacts moreover they are controverted. If the issue of fact of the evidence of an agency relationship between House of Compacts and Sebrite were resolved in favor of Defendant in intervention, then there is no basis for the Summary Judgment.

Further factual issues exist which shed doubt on Zion's status as a bona fide purchaser for value are the form of the contract which clearly indicates that if House of Compacts was acting as an agent of anyone its principal was Zion's 1st National Bank. That proposition is further buttressed by the affidavit of Alf Bostrum (T. 103-109) which at paragraph 19 he states that a "dealer arrangement" between Zion's and House of Compacts had previously been established.

CONCLUSION

Genuine issues of material facts do exist. Those facts, if resolved in favor of Sebrite, would require judgment in favor of Sebrite and therefore the Summary Judgment should not have been entered and Defendant in intervention should be given the opportunity to present its evidence at a trial on the merits.

Therefore, the case should be remanded for trial.

Respectfully submitted this 30th day of June, 1978.



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