

2001

Grant Ercanbrack v. Crandall-Walker Motor Company, Inc. : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

BRIGHAM YOUNG UNIVERSITY
J. Reuben Clark Law School

GRANT ERCANBRACK

Plaintiff-Appellant

vs.

CRANDALL-WALKER MOTOR
COMPANY, INC.

Defendant-Respondent

Case No. 14, 298

Brief of Defendant-Respondent

Appeal from Dismissal of Plaintiff's Complaint
upon Defendant's Motion to Dismiss, in the Fourth
Judicial District Court of Summit County, State
of Utah, Honorable George E. Ballif, Judge

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COMPANY, INC.

Defendant-Respondent

Case No. 14, 298

BRIEF OF DEFENDANT-RESPONDENT

NATURE OF CASE

This case involves the question as to the validity of a written document titled "Vehicle Buyer's Order, " as a contract of sale between the parties.

DISPOSITION IN LOWER COURT

The District Court for Summit County, State of Utah, held that the "Vehicle Buyer's Order" was not a valid contract as between the parties, since it had not been accepted by the sales manager or an officer of the defendant company, and granted defendant's motion to dismiss plaintiff's complaint.

NATURE OF RELIEF SOUGHT ON APPEAL

Respondent seeks to have the fuling of the District Court upheld.

STATEMENT OF FACTS

On the 25th day of October 1973, the plaintiff executed a "Vehicle Buyer's Order" for the purchase of a new 1974 Ford truck (P Ex. 1). The document provided on its face the following statement: "This order is not valid unless signed or accepted by sales manager, or officer of the company.

The lower court found from the evidence that neither the sales manager nor an officer of the company had accepted the order presented by the plaintiff, and that therefore no contract was entered into between the parties. During the next several months, plaintiff continued to talk to the defendant's salesman, Gordon Taylor, relative to the truck offer.

The evidence showed that in December 1974, the defendant company placed an order for a pickup truck for Lincoln Leasing Company (D Ex. 10). On May 23, 1973, the Lincoln Leasing Company orders were delivered to the defendant company and, in order to avoid a problem with the plaintiff, defendant's sales manager and officer offered that truck to

the plaintiff, in an attempt to resolve the apparent dispute that existed. The plaintiff refused to take the new truck because of its increased price.

Defendant's sales manager and officer, George Crandall, Jr., testified that he had not accepted the offer of the plaintiff when it was made, because of the proposed purchase price of the vehicle.

ARGUMENT

POINT I

WHEN SIGNING A CONTRACT IS A CONDITION PRECEDENT TO FORMATION, NO CONTRACT IS FORMED UNTIL THE SIGNING.

To form a valid contract, an offer must be accepted. The parties thereto must reach agreement. Furthermore, a contract must be accepted, without qualification, by one party thereto having a right to accept the offer. Hartzell v. Choctaw Lumber Co., 163 Okla. 240, 22 P. 2d 387 (1933).

(A) THERE WAS NO CONTRACT FORMED, BECAUSE THE TERMS OF THE DOCUMENT ARE CLEAR, AND MUST BE ENFORCED.

The relationship between the plaintiff and the defendant is not contractual, but is merely one where plaintiff is making the offer, and

the defendant is being asked to accept the offer, not the reverse. Such a relationship is apparent from the title of the document - "Vehicle Buyer's Order" - and by the instructions below the approval line for the sales manager's signature, which state: "This order is not valid unless signed as accepted here by sales manager or officer of the company."

Plaintiff is charged with knowledge of this writing, as well as all other unambiguous language in the order form. Plaintiff's desire to turn the order form into a contract is not supported by the language of the document, any signatures whatsoever, delivery of document, or the case law regarding these particular issues.

By the express terms of the Vehicle Buyer's Order, the parties to the agreement have made signing a condition precedent to their being bound. Where such is the case, no contract is formed until both parties have signed, although all other terms of the agreement may have been agreed upon. Summers v. Mutual Life Ins. Co., 12 Wyo. 369, 75 P. 2d 937 (1938). Without signing by either the plaintiff, salesman or sales manager, there is no indication from the document that the minds of the parties have met, creating an enforceable contract whose breach creates a cause of action.

The beginning point in interpreting a contract is an examination of the language used in accordance with the ordinary and usual meaning of

those words. Only in the case of uncertainty may background circumstances be considered. The intent of the document is clear - no contract is formed without a signing which indicates approval by the sales manager. Where the intent and purpose of a document can be ascertained, such document should be enforced according to the substance of the writing. Nagle v. Club Fountainbleu, 17 Ut. 2d 125, 405 P. 2d 346 (1965).

In Nagle, supra, the court made a determination that, in a contractor's suit seeking payment for construction services, the document signed by the parties, by its terms, was enforceable as a mortgage with liquidated damages, regardless of plaintiff's impression to the contrary.

This restriction, requiring intent to be determined from a document, was further defined in Continental Bank and Trust Co. vs. Bybee, 6 Ut. 2d 98, 306 P. 2d 773 (1957), where the court, confronted with an action on a note drafted by defendant attorney, said:

"The sole question before this court, then, is whether the parties intended by this agreement that respondent should assume the obligation on the note held by Continental Bank. This intent should be ascertained first from the four corners of the instrument itself, second from other contemporaneous writings concerning the same subject matter, and third from the extrinsic parol evidence of the intentions. Mathis v. Madsen, 1 Utah 2d 46, 261 P. 2d 952. If the ambiguity can be reconciled from a reasonable interpretation of the instrument, extrinsic evidence should not be allowed. Penn Star Mining Co. v. Lyman, 64 Utah 343, 231 P. 107; Jensen v. Kidman, 85 Utah 27, 38 P. 2d 303."

Id at 775 (Emphasis mine).

If a determination of party intent can be made from the instrument, arbitrary rules of law as to construction by contemporaneous writings or parol evidence will not be invoked. Western Development Co. v. Nell, 4 Ut. 2d 112, 288 P. 2d 452 (1955).

Viewed in its entirety, the buyer's order form is merely a proposal to enter into a contract. As such, without buyer's signature, it is not binding, even though accepted. Cox v. Denton, 104 Kan. 516, 180 P. 261 (1919), Williston, Contracts, Third Edition, Section 27. The definition of a proposal to enter into a contract was set forth in Martin v. Ore. Ins. Co., 232 Ore. 197, 375 P. 2d 75 (1962), where the court defined a proposal to enter into a contract as an offer which may or may not be accepted by the party issuing the invitation.

This court has previously held that intention of the parties to, and the meaning of a contract, are to be deduced from the language and contents of the document; where such terms are unambiguous, the agreement is conclusive. Plain City Irrigation Co. vs. Hooper Irrigation Co., 1 Ut. 2d 188, 356 P. 2d 625 (1960).

(B) THE STATUTE OF FRAUDS PREVENTS ENFORCEMENT OF ANY ORAL AGREEMENT TO SELL OR PURCHASE THE AUTOMOBILE.

Plaintiff attempts to create a written contract by evidence of oral representations. Such a result is not permissible. Laughlin v.

Haberfelde, 72 C.A. 2d 780, 165 P.2d 544 (1946).

Where the Statute of Frauds is in force and controlling, a written agreement may not be modified by oral representations. Wilson v. Gardner, 10 Ut. 2d 89, 343 P.2d 931 (1960).

Regardless of defendant's agent's representation, the instant agreement cannot be enforced. Utah Code Annotated 70A-2-201 provides:

Formal requirements - Statute of Frauds - (1). Except as otherwise provided in this section, a contract for the sale of goods for the price of \$500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought, or by his authorized agent or broker. (Emphasis mine).

Such provision is a codification of the necessity of writing, created by the common law. In jurisdictions where a statute requires such a writing, oral contracts are unenforceable. PLC Landscape Construction v. Picadilly Fish N' Chips, 28 Ut. 2d 350, 502 P.2d 562 (1972).

In Landscape, supra, the court pointed out:

Except where a change, modification, or addition to a contract may conflict with the rule against varying a written contract by parol, there is no reason why parties cannot subsequently change their agreement. Id at 563.

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By parity of reasoning, the reverse is true - when a rule is controlling, forbidding oral changes, the parties may not orally change the wording of the document, nor is oral amplification of the writing permissible. The Uniform Commercial Code prohibits such use of parol evidence:

70A-2-202: Final written expression - parol or extensive evidence - Terms with respect to which the conformity memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement, with respect to such terms as are included therein, may not be contradicted by evidence of any prior agreements, or of a contemporaneous oral agreement, but may be explained or supplemented (a) by course of dealing or usage of trade (Section 70A-1-205), or by course of performance (Section 70A-2-208); and (b) by evidence of consistent additional terms, unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement. (Utah Code Annotated 1953).

Plaintiff does not seek to show a course of dealing, usage of trade, or course of performance, because these do not support his understanding. Great care is taken in the industry to bind the buyer, as well as the dealer. A signing evidencing such a contract is, by usage of trade, mandatory. Such is absent here, and no oral contract or modification was formed.

Neither may plaintiff enlist the aid of the court to add additional terms, because the terms of the writing are clear and exclusive. This is

also supported by controlling case law. In Wilson v. Gardner, 10 Ut.2d 89, 348 P.2d 931 (1960), the court stated:

"There is no question that the parties may orally modify an agreement in writing not within the Statute of Frauds, at least where there is consideration." Id at 933 (Emphasis mine).

The existence, in the present case, of a statutory provision to the contrary, the instant writing may not be orally accepted.

Defendant submits that there is no basis for a determination that a contract has been formed in the instant case. Since defendant himself, under the facts of the case, could not have formed a contract, neither can his agent. Plaintiff's reliance upon agency law as creating a contract by silence and implied agency, therefore, is futile. The issue is not agency, but whether a contract has been formed, and whether such can be determined by the court. Under the law, as set forth, defendant submits that no contract has been formed.

ARGUMENT

POINT II

AN AGENT CANNOT ORALLY BIND HIS PRINCIPAL TO A CONTRACT UNDERSTOOD BY THE OTHER PARTY TO REQUIRE THE SIGNATURE OF THE PRINCIPAL.

The offer herein, unsigned by either party, cannot be accepted, by its terms, by an agent's oral representations. The signing and delivery of the order is necessary to form a binding contract.

It is clear under the writing, which plaintiff must be held to have read, that defendant's salesman cannot orally represent an acceptance. In Naujoks v. Suhrmann, 9 Ut.2d 84, 337 P.2d 967 (1959), the court limited the scope of agency, while finding agency to fall within the limitation:

"The fact that one may be an agent for one purpose does not make him an agent for every purpose, but agency is limited to acts within scope of authorized duties." Id at 969.

The authorized duties of defendant's agent-salesman do not include what plaintiff stresses - the ability to orally bind the defendant without delivery of a signed order form approved by defendant's sales manager.

ARGUMENT

POINT III

ONE IS NOT ENTITLED TO DAMAGES, IF A VALID CONTRACT WAS FORMED, WHEN THE EXPRESS CONDITIONS OF THE WRITING LIMIT DAMAGES.

The terms set forth on the reverse side of Vehicle Buyer's Order, entitled "Conditions", indicate in writing that an additional price may be charged for the vehicle, if a price increase has occurred prior to delivery. Plaintiff herein seeks, by parol evidence, to have the court

grant him damages because of the price increase of the vehicle he desired to have. Such an attempt is contrary to the express conditions which the plaintiff must be held to have understood at the time of the making of the offer for the defendant's acceptance.

The pertinent terms are as follows:

1. The manufacturer has reserved the right to change the list price of new motor vehicles without notice, and in the event that the list price of the new vehicle ordered hereunder is so changed, the cash delivered price, which is based on list price effective on the day of delivery, will govern in this transaction. But if such cash delivered price is increased the buyer may, if dissatisfied with such increased price, cancel this order, in which event, if a used vehicle has been traded in as a part of the consideration herein, such used vehicle shall be returned to the buyer upon the payment of a reasonable charge for storage and repairs (if any) or, if the used vehicle has been previously sold by the dealer, the amount received therefor, less a selling commission of 15 percent, and any expense incurred in storing, insuring, conditioning or advertising said vehicle for sale, shall be returned to the buyer.

Defendant has previously pointed out the burden one has when seeking enforcement or modification of a writing, clear and unambiguous in terms. The intent of the parties must be determined by the writing itself.

Defendant stresses that business contracts are to be construed in the same sense uniformly attached to them by the business world.

Carroll Construction Co. v. Smith, 157 Wash.2d 322, 223 P.2d 606 (1950).

The clear, unambiguous terms on the reverse side of the Vehicle Buyer's Order, clearly understood by the business world, indicate that defendant must, when the vehicle arrives, change the increased price. Such being the situation in the instant case, plaintiff is not entitled to recover damages under the guise of covering his loss.

SUMMARY

The Buyer Vehicle Order form at issue must be enforced by its terms. The Statute of Frauds prevents oral acceptance of the writing.

The terms of the writing are clear and unambiguous - requiring judicial construction to determine intent. A binding contract cannot be formed from the order unless it is signed by the buyer and salesman, and is approved by the sales manager. No contract was thus formed in this case.

Plaintiff cannot recover damages, contrary to the terms of the writing, for alleged breach of an oral offer not accepted. The statutory and case law forbids it.

Respectfully submitted,

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