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

Utah Supreme Court

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IN THE SUPREME COURT

OF THE STATE OF UTAH

GRANT ERCANBRACK,

Plaintiff-Appellant,

vs.

CRANDALL-WALKER MOTOR COMPANY, Inc.,

Defendant-Respondent,

Case No. 14,298

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

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CRANDALL-WALKER MOTOR COMPANY, Inc.,	)	
Defendant-Respondent,	)	

BRIEF OF PLAINTIFF-APPELLANT

NATURE OF THE CASE

This case involves the question of whether or not a valid contract of sale for the purchase of a pickup truck was entered into between the Plaintiff and the Defendant.

DISPOSITION IN LOWER COURT

The District Court held that a valid contract had not been entered into between the parties and granted Defendant's Motion to Dismiss the Complaint of the Plaintiff.

RELIEF SOUGHT ON APPEAL

Plaintiff-Appellant seeks relief from the Court's granting of Defendant's Motion to Dismiss and dismissal of Plaintiff's Complaint, and seeks judgment against the Defendant for $1,440.30, interest, attorney's fees and Court costs.

STATEMENT OF FACTS

On the 25th day of October, 1973, at the Defendant's, Crandall-Walker Motor Company, Inc., place of business in Coalville, Utah, after some negotiations, Plaintiff signed a "Vehicle Buyer's Order" which had been prepared and signed by Gordon Taylor, a salesman of the Defendant, for the purchase of a new 1974 Ford F-260 pickup truck. (Pl. ex. 1) At the time of signing said document, the Plaintiff offered to pay a hundred or two hundred dollars as a down payment for the truck (Tr. 6, lines 23-29) and to leave with the Defendant at that time his 1971 Ford pickup which was being traded in on the new truck. However, he was informed by the salesman for the Defendant, that it was not necessary that he make a payment on the contract and that he could use his 1971 Ford pickup until such time as the new vehicle arrived. (Tr. 7, lines 21-24)

For a period of several months the Plaintiff checked periodically with the salesman for the Defendant as to when the new vehicle would arrive. The salesman for the Defendant repeatedly stated to the Plaintiff that the order had been placed with the Ford Motor Company and that the truck would be arriving soon.

In April, 1975, approximately six months after the order had been signed, Plaintiff again stopped in at the Defendant's place of business in Coalville and talked with Gordon Taylor, Defendant's salesman, about said vehicle. Plaintiff observed another vehicle similiar to the one he had ordered, but of a different color and with different accessories, and discussed with Mr. Taylor the possibility of buying that truck in place of the one he had ordered. He was informed by Mr. Taylor that the truck

he ordered would be coming soon and that the Ford Motor Company would have to deliver his truck before the "'75's come out," and at the price before the raise. (Tr. 15, lines 14-27)

On or about May 23, 1974, the salesman for the Defendant indicated that the truck had finally arrived and had everything as ordered by the Plaintiff, but that "the company has upped the price $400.00 on you." (Tr. 16, lines 24-25) After some discussion with the salesman about the price increase, the salesman informed the Plaintiff that an officer of the Company was "down in Salt Lake right now finding out about this and he will be back tomorrow." (Tr. 17, lines 2-3) Plaintiff then agreed to return the following day.

The next day Plaintiff returned and was informed by Gordon Taylor, salesman for the Defendant, "it's going to cost you $870.00 over the contract price." (Tr. 18, lines 16-17) Plaintiff questioned the increase and indicated that he desired to talk with an attorney before proceeding further.

Plaintiff returned a day or two later and met with Junior Crandall, an officer of Defendant company, in an attempt to resolve the dispute. Mr. Crandall then informed him that it would cost an additional $1,450.00 over the price of the contract for the truck. (Tr. 21, lines 15-22) Plaintiff left his 1971 Ford pickup truck with the Defendant as the trade-in on the original contract and advised Mr. Crandall that he was going to see a lawyer.

Plaintiff tendered the full contract balance in cash to the Defendant (the 1971 pickup truck as a trade-in was already in the possession of the Defendant), but the same was refused and so an action for specific performance was commenced. (R. 001)

Defendant filed a Motion to Dismiss claiming that a valid contract had not been entered into between the parties because an officer of the company had not signed said order. Plaintiff was never advised until this time that the order had not been accepted. A hearing was held before the Court and Defendant's Motion was denied. (R. 011 & 016)

Prior to a trial on the Complaint for specific performance, the Defendant sold said 1975 Ford pickup truck. As a result thereof, it became necessary for Plaintiff to purchase another pickup truck for an additional cost of $1,440.30, with identical equipment. (Pl. ex. 7) (Tr. 51, lines 8-13) An Amended Complaint was then filed by the Plaintiff seeking damages for breech of contract (R. 022) and trial was held on March 6, 1975, on the Amended Complaint before the Honorable George E. Ballif, Judge, sitting without a jury. Plaintiff and his son testified to the foregoing matters, exhibits were offered and received and the salesman from whom the Plaintiff purchased a truck was called to testify, and as a result of his testimony, Plaintiff's exhibits 6 and 7 were prepared, introduced and received by the Court. These exhibits showed a net difference of $1,440.30 between the Defendant contract and the contract for the truck which Plaintiff later purchased. Defendant stipulated to said documents being entered and that the $1,440.30 was the net difference that the Plaintiff "had to pay between the two vehicles as a result of these various transactions." (Tr. 51, lines 12-13) At the conclusion of Plaintiff's case, Defendant made a Motion to Dismiss which the Court pro forma denied and Defendant then renewed said Motion at the end of the trial. The Court having considered said Motion at a later time,

granted Defendant's Motion to Dismiss at the close of Plaintiff's case and ordered that the Complaint be dismissed. (R. 044)

ARGUMENT

POINT I

THE FAILURE ON THE PART OF THE COMPANY, OR AN OFFICER OF THE COMPANY, TO ACT (NOTIFY THE PLAINTIFF OF THE NON-ACCEPTANCE OF THE CONTRACT) AMOUNTS TO AN AFFIRMANCE OR RATIFICATION OF THE CONTRACT.

The undisputed facts of the case show that the Plaintiff and the Defendnat's salesman, Gordon Taylor, signed the vehicle buyer's order on October 25, 1973. (Pl. ex. 1) It was also shown that the Plaintiff offered to pay $100.00, or more, on the purchase and to leave his pickup truck that was to be traded in on the new truck with the Defendant at that time. (Tr. 6, lines 23-29) Moreover, Plaintiff was informed by Defendant's salesman, Gordon Taylor, that it was not necessary to make the payment and that it was the policy of the Defendant company to allow the purchaser to continue to operate his vehicle until the new vehicle arrived. (Tr. 7, lines 21-24) The undisputed testimony also showed that the Plaintiff was never notified that the order had not been accepted by the company until an action for specific performance had been commenced. The facts further show that approximately 90 days after the order had been signed by the Plaintiff, that the salesman, Gordon Taylor, informed the Plaintiff that his order had been accepted and had been placed with Ford Motor Company. (Tr. 15, lines 19-27)

If an officer of the Defendant company had in fact not accepted the Plaintiff's order, then he owed a duty to the Plaintiff to advise him of that fact. He could not wait six and one-half months to notify the Plaintiff of this non-acceptance, and during

that time to allow his salesman to tell the Plaintiff that it had been accepted.

Restatement of Agency, Second Page 244, Section 94. Failure to Act as Affirmance:

> a. Silence under such circumstances that, according to the ordinary experience and habits of men, one would naturally be expected to speak if he did not consent, is evidence from which assent can be inferred. Such inference may be made although the purported principal had no knowledge that the other party would rely upon the supposed authority of the agent; his knowledge of such facts, however, coupled with his silence, would ordinarily justify an inference of asset by him.

Also 3 AmJur 2nd Page 565-G Agency Section 179-Time in which to repudiate unauthorized transaction.

> While a failure promptly to repudiate the agent's acts may under some circumstances amount to an adoption and ratification thereof, as where a failure to repudiate speedily may impose loss or injury upon the third person, the rule applicable generally is that where an act is done without authority, under an assumed agency, it is the duty of the principal to disavow and repudiate it in a reasonable time after information of the transaction if he would avoid responsibility therefor, what constitutes a reasonable time must largely, if not wholly, depend upon the circumstances of the particular case. In any event, however, a reasonable time within which to repudiate does not mean that the principal is permitted to await the issue of an event to transpire in the future, with the purpose of adopting the contract if the transaction to which it relates proves a paying one, and, if not, of rejecting it. If after a reasonable time he does not so disaffirm, ratification will be presumed, especially if the principal, with knowledge of the unauthorized act, remains silent or acquiesces therein for a long period of time without objection. (Underlining ours.)

POINT II

THE DEFENDANT IS ESTOPPED TO NOW DENY THE AGENCY OF GORDON TAYLOR TO ENTER INTO THE CONTRACT AND BIND THE COMPANY UNDER THE ORDER FORM SIGNED BY HIM AND THE PLAINTIFF ON OCTOBER 25, 1973. THE COMPANY HAD RATIFIED THE SALESMAN'S ACT IN STATING TO THE PLAINTIFF THAT THE ORDER HAD BEEN ACCEPTED, BY FAILING TO TAKE SOME POSITIVE ACTION TO INFORM THE PLAINTIFF TO THE CONTRARY.

Restatement of Agency, Second Section 103C page 267 & 269, Estoppel to Deny Ratification.

> A person may be estopped to deny that he has ratified an act or transaction.
>
> **c.** The manifestation may be by affirmative conduct, as a statement to the third person, or it may consist of a failure to act. If a person knows or has reason to know that another has purported to be his agent or has simulated him or his act, and that a third person has been deceived thereby and is likely to act upon his erroneous belief, he must take steps to correct the misinformation as would be taken by a reasonable person having ordinary regard for the interests of others if he is to avoid liability. If he fails to use care to undeceive the third person, he becomes subject to liability to him as if the facts were as believed by him to be, provided the deceived person changed his position in reasonable reliance upon their truth.

Also 3 Am Jur 2nd Page 563-4 Agency Section 178

> A principal, after receiving information that an act has been done without actual or apparent authority by one purporting to act as his agent on his behalf, is not bound by that act under the law of agency unless he ratifies the act; but he may and must elect to repudiate or ratify such act promptly or at least within a reasonable time. He cannot, by holding his peace, have the benefit of the unauthorized act or contract if it should afterward turn out to be profitable, and yet retain a right to repudiate if it otherwise. (Underlining ours.

POINT III

THE DEFENDANT WAS BOUND BY THE TERMS OF THE VEHICLE BUYER'S ORDER, EVEN IF AN OFFICER OF THE COMPANY DID NOT SIGN SAID ORDER WHERE IT LED THE PLAINTIFF TO BELIEVE THAT THE OFFER HAD BEEN ACCEPTED BY THE ACTS OF THE SALESMAN.

It is fundamental contract law that the parties may become bound by the terms of a contract even though they did not sign the contract, where they have otherwise indicated their acceptance of the contract, or led the other party to so believe that they have accepted the contract. (17 AmJur 2nd Section 70, pages 408-409)

A case specifically in point on this matter is the case of Albright vs. Stegeman Motor Car Co., (168 Wis. 557, 170 N. W. 951.) In this case the Plaintiff ordered a vehicle from the Defendant on an Order form such as in this case before the Court which order contained a clause "this proposal, if accepted, constitutes a contract, subject to the approval of the Stegeman Motor Car Co. at its office in Milwaukee, and must be countersigned by an Officer of the company to be valid and in force." The Plaintiff attempted to avoid the contract on the basis that the written order was never countersigned by an Officer of the company as by its express terms. The Court stated:

> it is quite fundamental that parties may become bound by the terms of a contract, even though they do not sign it, where their intention to do so is otherwise indicated. Manifestly, the provision requiring the order in question to be countersigned by an officer of the company was inserted for the benefit of the company, and to prevent its liability thereon until ratified by someone occupying a position of responsibility with the company. If a

> contracting party may be bound on a contract by acts evidencing an intent to that end, we see no reason why the provision here under consideration could not be waived, or why the company should not, by its acts, accept the Order, or become estopped to deny its binding force. If the company became bound upon the contract, so that it could not resist its enforcement by appellant, it acquired the right to enforce it against appellant.

The testimony of the Plaintiff was that the salesman, Gordon Taylor, repeatedly indicated to him that the contract had been accepted, that another salesman for the Defendant company also indicated that the contract had been accepted and placed with the Ford Motor Company, and further that an officer of the company, Junior Crandall, when questioned by the Plaintiff as to when the truck would arrive, led the Plaintiff to believe that the order had been accepted and that the truck would be arriving soon. It was only when the Defendant attempted to require the Plaintiff to pay additional money for the truck that anyone connected with the Defendant company made any indication that the contract was not binding upon both parties. The Plaintiff at all times understood the contract to be binding upon him and waited six and one-half months for the truck and refrained from purchasing another truck during this time to his detriment.

POINT IV

IT WAS NEVER INTENDED THAT THE COPY OF THE "VEHICLE BUYER'S ORDER" GIVEN TO THE PLAINTIFF WOULD BE ACCEPTED IN WRITING BY AN OFFICER OF THE COMPANY, AND THEREFORE THE DEFENDANT IS BOUND BY THE ORDER SIGNED BY ITS SALESMAN AND THE PLAINTIFF.

Plaintiff testified that upon the signing of the Vehicle Buyer's Order by the salesman and himself, that he was bound by the agreement and therefore both parties would be obligated to comply with the agreement. (Tr. 50, lines 8-12)

Mr. Crandall testified that the salesman, Gordon Taylor, was authorized, and would have been the one to notify the Plaintiff of the acceptance of the Order by the company. The salesman did in fact notify Plaintiff of the acceptance.

If the salesman was doing something he was authorized to do, then the company was bound by his acts, and cannot now say that the salesman made a mistake.

CONCLUSION

In this action the contract was purportedly destroyed in a fire. The only evidence to show that it had not been accepted was the testimony of Mr. Crandall, one of the officers of the company. However, several months after the order had been signed, the salesman informed the Plaintiff that the order had been accepted, and an order placed. In May, 1974, when the pickup truck which Plaintiff had ordered, arrived with all the equipment as ordered by the Plaintiff, the salesman informed Plaintiff that this was the truck he had ordered, that all of the equipment was on it, and the only problem was that Ford Motor Company had raised the price of the truck by $400.00. When Plaintiff refused to pay the $400.00 increase, the price was raised to $870.00, and when Plaintiff further refused to pay this additional sum, then the price was raised an additional $1,450.00 over and above the contract price. (Tr. 18, lines 12-21) and (Tr. 21, lines 15-22) It was only when the Plaintiff refused to pay the increase and commenced an action for specific performance that the Defendant then alleged that the Vehicle Buyer's Order had not been accepted by an officer of the company.

It would be manifestly unjust to allow the Defendant, by its salesman, to inform the Plaintiff that the order had been accepted, that the truck would be there soon, make repeated statements to this effect, show the Plaintiff the truck when it came in, and represent that this was the truck with all the accessories as ordered, with the Plaintiff relying on these representations and then six and one-half months later when the Plaintiff will not pay additional money, to state that the order had not been signed

by an officer of the company so that the Defendant can now sell the truck for more money. This case seem to fit squarely with the principal enumciated in 3 AmJur 2nd 479-481, Section 76:

> Stated in terms of estoppel, the rule is that where a principal has, by his voluntary act, placed an agent in such a situation that a person of ordinary prudence conversant with business is justified in assuming that such agent has authority to perform a particular act and deals with the agent upon that assumption, the principal is estopped as against such third person from denying the agent's authority; he will not be permitted to prove that the agent's authority was, in fact, less extensive than that with which he was apparently clothed. This rule had been based upon the principle that where one of two innocent parties must suffer from the wrongful act of another, the loss should fall upon the one who, by his conduct, created the circumstances which enabled the third party to perpetrate the wrong and cause the loss.

The record and the testimony shows that Mr. Ercanbrack suffered damages in a sum of $1,440.30, plus interest, Attorney's fees and Court costs, and the Motion to Dismiss should be overruled and judgment should be granted to him accordingly.

Respectfully submitted,

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