

1981

Rio Algom Corporation v. Jimco Ltd et al : Jimco Brief of Respondents in Answer to Petition for Rehearing

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

RIO ALGOM CORPORATION,
Plaintiff-Appellant,
vs.
JIMCO LTD., HUMECA EXPLORATION
COMPANY, JIM L. HUDSON, JUANITA
J. MEYER AS EXECUTRIX OF THE
ESTATE OF DANIEL H. MEYER,
ELDON J. CARD, NORMA HUDSON,
JEAN L. CARD, JUANITA J. MEYER,
N. J. WHITE, AUDREY WHITE, WILMA
WHITE, OTIS DIBLER, DOROTHY MAE
DIBLER, GRACE DAVIS and MARLOWE
C. SMITH,
Defendants-Respondents.

No. 16032

JIMCO DEFENDANTS-RESPONDENTS'
BRIEF IN ANSWER TO
PETITION FOR REHEARING

Petition for Rehearing with Respect to the
Decision of the Utah Supreme Court
Filed September 19, 1980

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C. SMITH,

Defendants-Respondents.

No. 16032

JIMCO DEFENDANTS-RESPONDENTS'
BRIEF IN ANSWER TO
PETITION FOR REHEARING

Pursuant to Rule 76(e) of the Utah Rules of Civil Procedure and the Order Concerning the Due Date of the Jimco defendants-respondents' Brief in Answer to Rio's Petition for Rehearing entered by Justice D. Frank Wilkins of this Court on October 30, 1980, defendants-respondents Jimco, Ltd., Humeca Exploration Company, Jim L. Hudson, Juanita J. Meyer as Executrix of the Estate of Daniel H. Meyer, Eldon J. Card, Norma Hudson, Jean L. Card, and Juanita J. Meyer (hereinafter referred to collectively as "the Jimco defendants-respondents") respectfully submit the following Brief in Answer to plaintiff-appellant

Rio Algom Corporation's (hereinafter referred to as "Rio") Petition for Rehearing concerning this Court's Decision filed September 19, 1980 (hereinafter referred to as "the Decision").

ARGUMENT

PLAINTIFF-APPELLANT RIO ALGOM CORPORATION'S PETITION FOR REHEARING SHOULD BE DENIED

The Utah Supreme Court has consistently required the presentation of a very strong case for rehearing before such will be granted. See Jones v. House, 4 Utah 484, 11 P. 619 (1886); Ducheneau v. House, 4 Utah 483, 11 P. 618 (1886); Brown v. Pickard, 4 Utah 292, 11 P. 512 (1886); In re MacKnight, 4 Utah 237, 9 P. 299 (1886); Venard v. Old Hickory M. & S. Co., 4 Utah 67, 7 P. 408 (1885). The Court "must be convinced . . . either that [it] failed to duly consider some material point in the case, or that it erred in its conclusions, or that some matter has been discovered which was unknown at the time." Venard v. Old Hickory M. & S. Co., supra, 4 Utah at 67-68, 7 P. at 408-409 (emphasis supplied). See also Brown v. Pickard, supra; In re MacKnight, supra. Where a petition for rehearing merely urges that the Court reconsider matters fully considered in the Court's opinion or where the Court's conclusions were not in error, rehearing must be denied. See, e.g. Jones v. House, supra; Ducheneau v. House, supra; Brown v. Pickard, supra; In re MacKnight, supra; Venard v. Old Hickory M. & S. Co., supra.

In the instant action, Rio acknowledges that this Court, in its Decision "carefully considered each legal argument advanced and rejected it [sic] on grounds that ... are certainly within reasonable parameters." Brief in Support of Petition for Rehearing at 1-2. In fact, Rio rather candidly admits that its Petition, in essence, merely requests "one more quick look" at those very arguments. Id. at 3. The Decision amply demonstrates the Court's understanding of those arguments and the legal principles involved and, under the governing law, the Petition should be denied accordingly. The suggestion that the Court perhaps would not have reached what Rio acknowledges to be a reasonable conclusion but for some "misconception" that the Settlement Stipulation in question effected a settlement of the entire litigation simply reflects a misreading or misconstruction of the Decision by Rio. But even had the Court held such a misconception, it would be without consequence to the Decision.

- A. THE COURT HAS DETERMINED THAT PLAINTIFF-APPELLANT RIO ALGOM CORPORATION IS NOT ENTITLED TO RECEIVE ANY PORTION OF THE CONSIDERATION GIVEN TO THE AUDREY DEFENDANTS-RESPONDENTS BY THE JIMCO DEFENDANTS-RESPONDENTS FOR THE SETTLEMENT STIPULATION BETWEEN THEM.

Before the lower court and throughout its appeal to this Court, Rio has contended that the Settlement Stipulation between N. J. White, Audrey White, Wilma White, Otis Dibler, Dorothy Mae Dibler, Grace Davis, and Marlowe C. Smith (hereinafter sometimes

referred to collectively as "the Audrey defendants-respondents") and the Jimco defendants-respondents was invalid because it allegedly altered the Amended Audrey Lease and the Rio-Jimco Option Agreement without Rio's consent and because it allegedly was in breach of fiduciary duties and implied covenants. The Court, in its Decision, carefully considered and unanimously rejected each of those contentions. The Decision holds the Settlement Stipulation valid and Rio concedes this is to be a reasonable conclusion. However, Rio seeks rehearing apparently because the Decision allows the Audrey defendants-respondents the benefit of this valid Settlement Stipulation.

Rio contends that it is entitled to a portion of the consideration given to the Audrey defendants-respondents by the Jimco defendants-respondents by virtue of the Amended Audrey Lease and by virtue of its status as a cotenant with the Audrey defendants-respondents of the subject properties. The Court's Decision makes it clear, however, that Rio has no such rights under the Amended Audrey Lease or otherwise. As the Court recognized, the Audrey defendants-respondents had no fiduciary or other duty to Rio with respect to the exercise of the lease option which is the subject of the Settlement Stipulation and the Settlement Stipulation was a contract separate and apart from the other agreements between the parties. These points were fully considered in the Decision and nothing can or need be

added to the Court's treatment of the issues as reflected therein. Rio's Brief in Support of Petition for Rehearing adds nothing to its prior arguments in this regard.*/

- B. THE COURT CORRECTLY RECOGNIZED THAT THE SETTLEMENT STIPULATION EFFECTED A SETTLEMENT OF ALL CLAIMS BETWEEN THE AUDREY DEFENDANTS-RESPONDENTS, ON THE ONE HAND, AND RIO AND THE JIMCO DEFENDANTS-RESPONDENTS, ON THE OTHER.

In a transparent effort to divert the Court's attention from the fact that the Settlement Stipulation between the Audrey defendants-respondents and the Jimco defendants-respondents is a settlement agreement favored by the law, Rio argues that the Court mistakenly believed that the agreement effected a settlement of this entire action. Of course, the Settlement Stipulation did completely settle this action as to N. J. White, Audrey White, Wilma White, Otis Dibler, Dorothy Mae Dibler, Grace Davis, and Marlowe Smith; they are no longer involved in this litigation. Some of Rio's claims against the Jimco defendants-respondents and the Jimco defendants-respondents counterclaims against Rio remain to be litigated. The Decision clearly and expressly recognizes this. See, e.g. Decision at 2.

*/ The hypothetical advanced by Rio at pages 3-4 of its Brief in Support of Petition for Rehearing is merely another hypothetical illustration of its previous arguments. See, e.g. Appellant's Brief at 11-12. The fallacy and the inapplicability of such hypotheticals is amply demonstrated in the prior briefs. See, e.g. Brief of Jimco Defendants-Respondents at 9-10 and 17-20. The Decision plainly rejects those hypotheticals as neither analogous nor persuasive. The "new" hypothetical only offers a new set of imaginery facts not present in this litigation.


The Settlement Stipulation is a settlement agreement and, thus, warrants the favor Rio concedes should be accorded to such contracts. See Brief in Support of Petition for Rehearing at 2. This is especially true in light of the fact that this action was commenced as an interpleader action by Rio.

Moreover, even if the Court had incorrectly thought that 100% of this litigation was resolved by the Settlement Stipulation, instead of 90% or 50% or 10% of it, the arguments of Rio are still fallacious and the reasoning of the Court in support of the Decision stands unaffected.


CONCLUSION

For the foregoing reasons, Rio's Petition for Rehearing should be denied.

Respectfully submitted this 12th day of November, 1980.


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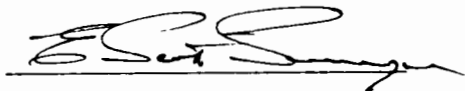
CERTIFICATE OF MAILING

THIS IS TO CERTIFY that copies of the foregoing Jimco Defendants-Respondents' Brief in Answer to Petition for Rehearing were mailed, postage prepaid, this 12th day of November, 1980 to each of the following:

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A handwritten signature in dark ink, appearing to read "W. G. Waldeck", is written over a horizontal line.