

2001

Reliance National Life Insurance Company v. James E. Caine : Brief of Respondent

Utah Supreme Court

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UTAH SUPREME COURT
BRIEF

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IN THE SUPREME COURT OF THE STATE OF UTAH

RELIANCE NATIONAL LIFE INSURANCE :
COMPANY, a corporation, :

Plaintiff-Respondent, :

-vs-

Case No. 14474

JAMES E. CAINE,

Defendant-Appellant. :

RESPONDENT'S BRIEF

Appeal from the Judgment of Dismissal in the Third Judicial
District Court, in and for Salt Lake County, State of Utah
Honorable Bryant H. Croft, Judge

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FILED

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Clerk, Supreme Court, Utah

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IN THE SUPREME COURT OF THE STATE OF UTAH

RELIANCE NATIONAL LIFE INSURANCE :
COMPANY, a corporation, :

Plaintiff-Respondent, :

-vs- :

Case No. 14474

JAMES E. CAINE, :

Defendant-Appellant. :

RESPONDENT'S BRIEF

STATEMENT OF THE KIND OF CASE

The defendant-appellant is appealing from the Order of the trial court granting plaintiff's Motion to Dismiss defendant's counterclaim for failure to prosecute.

DISPOSITION IN THE LOWER COURT

Seven and one-half years after the Utah Supreme Court remanded the above case for a new trial, defendant, on October 17, 1975, filed a motion to set the case for trial. Upon plaintiff's motion, its complaint and defendant's counterclaim were dismissed for failure to prosecute. Twice hearing and twice denying defendant's motion for reconsideration, the trial court held that the dismissal was appropriate as defendant had failed to diligently prosecute his claim.

RELIEF SOUGHT ON APPEAL

The Respondent submits that the Supreme Court of the

State of Utah should affirm the order of the trial court dismissing defendant's counterclaim for failure to diligently prosecute the same.

STATEMENT OF FACTS

On February 1, 1956, Reliance National Life Insurance Company (hereinafter Reliance, or plaintiff), entered into an employment agreement with James E. Caine (hereinafter Caine or defendant), whereby Caine was employed as an agency supervisor for Reliance. After approximately five months, a dispute arose between the parties which resulted in the termination of Caine's employment on August 20, 1956, and the initiation of this action on October 12, 1956. In the action, after various amendments to the pleadings, Reliance sought to recover \$6,762.63 from Caine for money advances, charges to Reliance's account, and insurance premiums collected by Caine but not paid to Reliance. Caine filed a counterclaim which after various amendments to the pleadings ultimately sought an accounting and a judgment for any commissions which the accounting might show.

Caine's original counsel withdrew on October 2, 1957. After Reliance had served Notice of Readiness for Trial on January 23, 1960, new counsel appeared for Caine and the matter proceeded to trial on a piecemeal basis during 1960. On January 5, 1961, the District Court entered a memorandum decision that Reliance was entitled to judgment in the sum of \$6,762.63, and that no complete accounting was ever furnished to Caine.

On December 19, 1964, new and third counsel appeared for Caine, alleging that certain matters were still before the court for determination. However, in March of 1966, Caine's third counsel withdrew before any further proceedings in the matter were entered in the record. A fourth counsel for Caine filed a motion on April 22, 1967, to re-open the case for trial or alternatively, to enter Findings of Fact, Conclusions of Law and Judgment. Finally, nearly eleven years after the action was commenced and seven years after trial, Reliance's counsel prepared Findings of Fact, Conclusions of Law and Judgment, which were signed by the Court on May 3, 1967. The judgment awarded Reliance \$6,762.63, plus costs, and dismissed Caine's Counter-claim.

Caine gave notice of appeal on May 29, 1967. The Supreme Court reversed the decision of the District Court on March 28, 1968 and remanded for a new trial.

During this course of events, Reliance was merged into National Western Life Insurance Company (hereinafter National) with headquarters in Austin, Texas. Neither counsel for Reliance nor counsel for National attempted to go forward with a new trial after the decision of the Supreme Court, and did not file any pleadings or take any steps with regard to this matter, until notified of defendant's motion to set date for new trial during October of 1975.

Caine filed no pleadings and apparently took no other action after the Supreme Court decision until his Motion to Set Date for New Trial was filed by another new counsel, the fifth for Caine in this matter, on October 17, 1975. Defendant's Motion came within a week of the nineteenth anniversary of the filing of this action, and seven and one-half years after the decision of the Supreme Court was handed down reversing the decision of the District Court.

National is not aware of the availability of any of the witnesses to the 1956 events which gave rise to this action, with the exception of Caine. National cannot now locate any files, records, accountings, evidence or other material with respect to this action. Former counsel for plaintiff has been dead for over six years.

ARGUMENT

I.

PLAINTIFF WAS ENTITLED TO HAVE THIS ACTION DISMISSED WITH PREJUDICE PURSUANT TO RULE 41 OF THE UTAH RULES OF CIVIL PROCEDURE FOR FAILURE OF DEFENDANT TO PROSECUTE HIS COUNTERCLAIM.

Rule 41(b), Utah Rules of Civil Procedure (1972)

provides:

Involuntary Dismissal. Effect thereof for failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against him. . . . Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision . . . operates as an adjudication upon the merits.

It is clear that dismissal on motion of a plaintiff of a defendant's counterclaim for failure to prosecute is included within Rule 41(b). Rule 41(c), U.R.C.P. (1972), provides:

Dismissal of Counterclaim, Cross-Claim or Third-Party Claim. The provisions of this rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim.

See also, Crystal Lime & Cement Co. v. Robbins, 8 Utah 2d 389, 335 P.2d 624, 626 (1959).

The Utah Supreme Court has repeatedly reviewed dismissals for failure to prosecute. In the case of Brasher Motor & Finance Co. v. Brown, 23 Utah 2d 247, 461 P.2d 464 (1969), the plaintiff had brought a complaint sounding in replevin seeking the recovery of several automobiles. After the sheriff made a return swearing that the property could not be found, the defendants filed a lengthy counterclaim which plaintiff immediately moved to dismiss. The matter was then laid to rest by both parties for five and one-half years. After this delay, defendants suddenly attempted to reactivate the matter. On his own motion, the trial judge dismissed the entire case. The Supreme Court held that even without looking to Rule 41, the trial court had discretion to dismiss an action for want of prosecution on its own motion and that the court had not abused its discretion in this case.

More recently, in Thompson Ditch Co. v. Jackson, 29 Utah 2d 259, 508 P.2d 528 (1973), the Supreme Court held that the

trial court did not abuse its discretion in granting defendants' motion to dismiss under Rule 41(b). The plaintiff had brought an action seeking an injunction and damages against several defendants for alleged interference with the flow of water in plaintiff's ditch. About one year after the original complaint was filed, plaintiff filed an amended complaint. About four and one-half years later, plaintiff filed a motion to file a second amended complaint. Plaintiff did not pursue that motion but over two years later, moved that the case be set for pretrial. On motion of defendants, the trial court dismissed the action for failure to diligently prosecute. The Supreme Court's opinion noted that during the seven and one-half years from filing of the complaint to motion for pretrial, there had been some settlement talks between the parties, although defendants had not offered a compromise.

The Utah Supreme Court, in Vanjonora v. Draper, 30 Utah 2d 364, 517 P.2d 1320 (1974), again addressed the question of dismissal for failure to prosecute. Filing a complaint in September, 1969, plaintiff was awarded judgment in October, 1971. Nevertheless, the trial court set aside the judgment in May, 1972. Subsequently, new counsel for the respective parties was substituted and numerous offers and counteroffers of settlement were made. Finally in December, 1972, the trial court granted defendant's Motion to Dismiss as plaintiff could not be contacted by his counsel in order to set a trial date. The Supreme Court

held that the trial had abused its discretion in dismissing the action stating:

This court only looks to the period after judgment was set aside in its determination as to whether the trial court abused its discretion in ordering a dismissal for failure to prosecute. Id. at 1322.

The short period of time involved, the substitution of counsel, and the negotiations between the parties collectively indicated that dismissal was inappropriate.

Finally, in Westinghouse Elec. Supply Co. v. Paul W. Larsen Contractor, Inc., _____ Utah 2d _____, 544 P.2d 876, 879 (1975), the Utah Supreme Court concluded:

Whether there is such justifiable excuse is to be determined by considering more factors than merely the length of time since the suit was filed. Some consideration should be given to the conduct of both parties, and to the opportunity each has had to move the case forward and what they have done about it; and also what difficulty or prejudice may have been caused to the other side; and most important, whether injustice may result from the dismissal.

In this case, the Supreme Court held that dismissal should not have been granted due to the extensive discovery involved and defendant's failure to examine documents placed at its disposal. (Only 3 years had passed since plaintiff's complaint has been filed).

Under the facts of the case at bar, it is clear

that defendant had as much responsibility as plaintiff to prosecute the action after the reversal by the Supreme Court over seven and one-half years ago. 24 Am. Jur. 2d, Dismissal §23 at 20-21. Nevertheless, defendant has not initiated settlement negotiations, he has not sought interim discovery. His only claim, seemingly insufficient by itself, is that he has had difficulty in finding substitute counsel. Defendant's inaction since the Supreme Court reversal has resulted in a severe hardship to plaintiff. Its business has been taken over, its counsel has died, and it is now unable to locate any material or evidence with respect to defendant's counterclaim. As plaintiff in no way hampered prosecution of defendant's claim, plaintiff was entitled to have this action dismissed with prejudice under Rule 41, U.R.C.P. (1972).

II.

DEFENDANT IS BARRED FROM SEEKING EQUITABLE RELIEF BY THE DOCTRINE OF LACHES.

The law in Utah on laches is quite clear and comprehensive. In Papanikolas Bros. Enterprises v. Sugarhouse Shopping Center Associates, _____ Utah 2d _____, 535 P.2d 1256 (1975), the Supreme Court said:

Laches is not mere delay, but delay that works a disadvantage to another. To constitute laches, two elements must be established: (1) The lack of diligence on the part of plaintiff; (2) An injury to defendant owing to such lack of diligence. Although lapse of time is an essential part of laches, the length of time must depend on the circumstances of each case, for the propriety of refusing a claim is equally predicated upon the gravity of the prejudice suffered

by defendant and the length of plaintiff's delay. [525 P.2d at 12602.]

In Rutherauff v. Silver King W. Mining & Milling, 95 Utah 279, 300, 80 P.2d 338, 347 (1938), the court said:

. . . If the complainant has been guilty of laches, a court of equity will not look into the transaction at all. It requires conscience, good faith and reasonable diligence. These wanting, the court will remain passive and leave the parties where it finds them.

An action for an accounting where a fiduciary relationship exists is an equitable action. Newton v. Tracy Loan & Trust Co., 88 Utah 547, 40 P.2d 204 (1935). Therefore, defendant's counterclaim for an accounting is subject to the equitable bar of laches. Jones Mining Co. v. Cardiff Mining & Milling Co., 56 Utah 449, 191 P. 426 (1920).

In the case at bar, defendant's lack of diligence in prosecuting his counterclaim is manifest from the record. For seven and one-half years prior to the filing of defendant's Motion to Set Date for New Trial, there is a total absence of any action by defendant with respect to his claim. Furthermore, National has never been approached by defendant for any reason during the seven and one-half year period even though Reliance was merged into National prior to the filing of the appeal in 1967.

With respect to the injuries and prejudice caused to plaintiff by defendant's delay, a recitation of the facts manifests the inequity of allowing defendant to proceed after his long delay. Plaintiff is not now able to locate any accounts, records,

claim. Plaintiff is not now aware of any witnesses to the transactions which gave rise to the defendant's claim, with the exception of the defendant himself. Plaintiff's former counsel, who represented Reliance for the first twelve to thirteen years of proceedings in this matter, including the original trial, is unable to help reconstruct evidence or accounts because he has been dead for over six years.

In Burningham v. Burke, 67 Utah 90, 107, 245 Pac. 977, 983 (1926), the court said:

. . . Ordinarily, whether laches exists is dependent upon the particular facts and circumstances of the case. While delay is an important factor yet mere delay, unless unreasonable or inexcusable, is not enough; and of equal importance are the circumstances occurring during the delay, the relation of the parties to the subject, disadvantages that may have come through loss of evidence . . . or injury from other causes. [Citing cases. Emphasis supplied.]

Plaintiff has lost evidence and has maintained no relation to the subject matter during defendant's delay. Even if that were not the case, it would seem extremely difficult at best for defendant to show that his delay was reasonable or excusable. Defendant's belated attempt to revive his counter-claim is clearly barred by laches.

. . . [A] court of equity should always insist upon reasonable diligence and not

encourage stale claims and thus
open the doors of our courts to
those who have slept upon their
rights. Jones Mining Co. v.
Cardiff Mining & Milling Co.,
56 Utah 449, 469, 191 Pac. 426
(1920).

CONCLUSION

It is respectfully submitted that the Trial Court's
Judgment dismissing the Complaint and Counterclaim, which were
filed nearly twenty years ago, should be affirmed.

Respectfully submitted,

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