1979

Olympia Sales Co. v. John Long : Brief of Appellant

Utah Supreme Court

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Appealed from

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TABLE OF CONTENTS

STATUTES CITED

CASES CITED

IN THE SUPREME COURT OF THE STATE OF UTAH

OLYMPIA SALES COMPANY, a Utah Corporation, Plaintiffs and Respondents, vs. JOHN LONG and JOHN LONG dba JOHN'S KITCHEN KORNER, Defendant and Appellant.	)	Case No. 16216

BRIEF OF APPELLANT

NATURE OF THE CASE

Plaintiff claims that Defendants are indebted to them on open account.

DISPOSITION IN LOWER COURT

The Plaintiff filed a Complaint against the Defendant in Salt Lake County, State of Utah. The Defendant made a Motion for Change of Venue alleging that the Plaintiff's claim was on open account and that the Defendant was a resident of Iron County, State of Utah. The trial court denied the Motion of the Defendant for Change of Venue.

RELIEF SOUGHT ON APPEAL

Defendant seeks an Order requiring venue changed to Iron County, State of Utah.

STATEMENT OF FACTS

In November of 1978, the Plaintiff filed a Complaint

against the Defendants alleging that certain sums were due on open account. The Plaintiff attached a copy of a blank invoice to the Complaint and said invoice was not signed by the Defendants or any of them.

The Defendants filed a Motion for Change of Venue wherein said Defendants alleged that the Defendant, John Long, and John Long dba John's Kitchen Korner, during the course of business with the Plaintiff had always been a resident of Iron County, State of Utah, and had never contracted to perform any obligation in Salt Lake County nor had said Defendant ever contracted in writing to pay or perform any obligation in Salt Lake County (See Motion for Change of Venue and Affidavit of John Long).

A memorandum was submitted by the Defendant in support of the Motion for Change of Venue and the District Judge issued its Order on the 13th day of December, 1978, denying the Motion for Change of Venue.

ARGUMENT

POINT I.

THE TRIAL COURT ERRED IN FAILING TO GRANT DEFENDANTS MOTION FOR CHANGE OF VENUE.

Defendant relies upon Section 78-13-7, Utah Code Ann. (as amended 1953), which requires that, unless there is an exception, the action must be tried in the County in which the cause of action arises or in the County in which any Defendant resides at the commencement of the action. In this case, the Plaintiff claims the Defendant received certain merchandise [illegible] does not claim

that there was a written contract as required by Section 73-13-4, supra, nor does the Plaintiff contend that any of the Defendants reside in Salt Lake County. This case does not come within the bounds of Palfreyman v. Trueman, 105 U. 463, 142 P.2d 677, (1943),for the reason that there is no written contract signed by the Defendant wherein he agrees to pay or perform any obligation in Salt Lake County.

Generally persons have the right to have actions tried in the County where one of them resides and actions which may be tried elsewhere are limited and restricted to those which the statutes excepts from the general rule. Buckel v. Ogden Furniture and Carpet Company, 61 U. 559, 216 P. 684 (1923). In this case the Defendant resides in Iron County and the facts in this case do not provide an exception to this general rule.

The case of Floor v. Mitchell, 86 U. 203, 41 P.2d 281 (1935), dealt with certain picture reproducing equipment to be installed in Parowan Utah. The contract was silent as to place of performance or payment and the Supreme Court of the State of Utah said that the Defendants had a right to have the case tried in the County where they resided. In the instant case, the Defendant ordered certain cabinets to be installed in Iron County, Utah. The cabinets were sent on open account and were paid for by the Defendant after the cabinets were received. There are no written documents signed by the Defendant calling for a place of performance or payment and therefore, this Defendant has a right to have the case tried in the County where he resides.

CONCLUSION

The Plaintiff has not shown that they are excepted from the general rule and this case should be transfered to Iron County.

Respectfully submitted,

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