

1952

Theo W. Plescia dba Western Auto Parts Company v. Louis E. Humphries : Brief of Respondent

Utah Supreme Court

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N. H. Tanner; Nephi Jensen; Attorneys for Respondent;

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IN THE
SUPREME COURT
OF THE
STATE OF UTAH

THEO W. PLESCIA, d. b. a.

WESTERN AUTO PARTS COMPANY,

Respondent,

vs.

LOUIS E. HUMPHRIES,

Appellant.

Case No. 7775

FILED

FEB 21 1952

Clerk, Supreme Court, Utah

BRIEF OF RESPONDENT

N. H. TANNER, and

NEPHI JENSEN

Attorneys for Respondent

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AUTHORITY CITED .

The law governing the case is stated in Corpus Juris Volume 8, Section 1013.

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BRIEF OF RESPONDENT

STATEMENT OF FACTS

On or about the 1st day of July, 1948, appellant executed and delivered to respondent eleven promissory notes. There was a blank space on each of said notes for the notation of the

due date. The date of the execution of said notes was not inserted by appellant, neither were the spaces for the rate of interest. All of the notes were signed by appellant, delivered to respondent with all the omissions as stated above.

After the notes had been delivered to respondent, respondent inserted at the top of the notes, the actual date the notes were delivered by appellant to respondent; and in the blank spaces for the due date he inserted the dates on which it was agreed that said notes would fall due and be payable.

No specific rate of interest was agreed upon, but at the time the notes were delivered by appellant to respondent, appellant gave respondent implied authority to fill in the rate of interest in the blanks in the printed forms of said notes. In that regard appellant requested that respondent do not "overcharge appellant on interest" (T. R. 16).

STATEMENT OF POINTS

1. The Court did not err in failing to find that the notes had been materially altered by respondent. Appellant did not, by his pleadings, raise the issue of alterations. Moreover, there was no evidence of any alterations.

2. The decision of the Court is in harmony with the law.

ARGUMENT

The record in the case presents one simple clear-cut issue, an issue of fact. Was there any alterations in the notes sued on? Respondent insists that there were no alterations. There is no evidence that any word or figure in the notes as delivered by appellant to respondent was erased, changed or altered. Respondent did insert at the top of the notes the actual date of the execution of the notes. He also inserted in the blank for the due date of the notes dates agreed upon as the due dates. These additions did not in any way change or alter the terms of the notes. The insertion of the rate of interest by respondent was contemplated. This is shown by the fact that the notes were handed by appellant to respondent with blank spaces for the rate of interest, and by the further fact that appellant delivered to respondent the note entirely blank, (Ex. H), except for the signature of appellant, intended to cover all interest; and at the time the notes were handed to respondent, appellant requested that respondent do not overcharge him on interest. Moreover, respondent filled in the rate of interest before maturity in the three notes which were paid by appellant on their respective due dates; and appellant made no objection at the time of paying these notes to the fact that respondent had filled in the rate of interest in the blank space.

The general law governing the case is stated in Corpus Juris, Volume 8, Section 1013:

“The general rule is that the delivery of a negotiable instrument containing blanks which are meant to be filled carries with it prima facie an implied authority to fill these blanks in such a way as apparently is in conformity with the purpose and character of the instrument.”

CONCLUSION

The decision of the Court is based on the facts and in harmony with the law governing these facts.

Respectfully submitted,

N. H. Tanner

Nephi Jensen

Attorneys for Respondent