

1979

Sugarhouse Finance Company v. Eugene L. Anderson And Colleen W. Anderson : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

SUGARHOUSE FINANCE COMPANY,)	
Plaintiff-Appellant,)	
vs.)	Case No. 16462
EUGENE L. ANDERSON and)	
COLLEEN W. ANDERSON,)	
Defendant-Respondent,)	

BRIEF OF APPELLANT

APPEAL FROM THE JUDGMENT OF THE THIRD DISTRICT COURT
OF SALT LAKE COUNTY, STATE OF UTAH
HONORABLE CHRISTINE M. DURHAM, JUDGE

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SUGARHOUSE FINANCE COMPANY,)	
Plaintiff-Appellant,)	
vs.)	Case No. 16462
EUGENE L. ANDERSON and)	
COLLEEN W. ANDERSON,)	
Defendant-Respondent,)	

BRIEF OF APPELLANT

NATURE OF CASE

On December 17, 1976, Plaintiff-Appellant, Sugarhouse Finance Company (hereafter "Sugarhouse"), obtained a judgment against Defendants-Respondents, Eugene L. Anderson and Colleen W. Anderson (hereafter "Andersons"), for the default of a Promissory Note (R. 22-23). On January 31, 1979, Eugene L. Anderson (hereafter "Anderson") approached Sugarhouse to settle the judgment. Anderson alleged that a valid settlement had been reached and that it should be enforced by the Court.

DISPOSITION IN THE LOWER COURT

The Honorable Christine M. Durham granted Andersons' motion to enforce the alleged settlement agreement, and entered Findings of Fact, Conclusions of Law, and Order to that effect.

RELIEF SOUGHT ON APPEAL

Appellant Sugarhouse Finance Company prays for reversal of the trial court's order that there was a valid and enforceable settlement agreement for the satisfaction of the appellant's judgment or, in the alternative, for a new trial, and that appellant be awarded costs on appeal.

STATEMENT OF FACTS

On July 7, 1976, Sugarhouse filed a complaint against Anderson claiming the default of a promissory note (R. 2-5). Judgment was entered in favor of Sugarhouse against Andersons on December 17, 1976. The judgment in large part remains unsatisfied. (R. 89).

On January 29, 1979, Andersons were served with an Order in Supplemental Proceedings ordering them to appear in court on February 20, 1979, and answer questions concerning their property (R. 35-37, 38, 90).

On January 31, 1979, Eugene Anderson traveled to Salt Lake City, Utah, and met with Neuman Petty, President of Sugarhouse Finance Company (R. 38, 90, 94, 114). Mr. Anderson's purpose in meeting with Mr. Petty was to settle the judgment previously entered in this case (R. 95). At this meeting, Eugene Anderson informed Mr. Petty that he had experienced health problems resulting in extreme medical expenses (R. 95-96, 101), and that he was presently considering taking out bankruptcy as he was under a great deal of

financial pressure (R. 96, 101). Mr. Anderson represented to Mr. Petty that he did not have any assets (R. 118). Based upon Anderson's representations, Anderson and Sugarhouse agreed to settle the judgment for the sum of \$2,200.00 (R. 38, 90, 111-112, 115).

After negotiating this agreement with Appellant, Anderson tendered a check payable to Neuman C. Petty, personally (R. 90, 119). The check was dated January 31, 1979, and was drawn on Zions First National Bank, Salina, Utah, with the notation "payment in full, judgment Civil No. 236207." (See Plaintiff's Exhibit 1, and R. 38, 90).

After negotiations were completed, Anderson informed Sugarhouse that he did not have sufficient funds in his account to cover the check but that he would attempt to make arrangements with his bank to obtain payment (R. 104, 115, 119). Anderson indicated he would call Mr. Petty the following day to report on whether or not the check would be honored (R. 115, 119). Respondent Eugene Anderson did not telephone Appellant on February 1, 1979, but did contact Mr. Petty on the following day (R. 91, 115, 119).

Prior to being served with the Order in Supplemental Proceedings, Anderson was in the process of closing a real estate transaction (R. 90, 99, 110). Anderson and one Keith Cannon owned an interest in twelve acres of real property located in Aurora, Sevier County, Utah, and were

attempting to sell four acres of said property to a third party (R. 99, 107, 108). Anderson was cognizant of Sugarhouse's judgment being a cloud upon the title of the Anderson-Cannon property (R. 90, 99, 111). Anderson knew that the real estate sale could not be closed until the judgment was satisfied (R. 90-91, 110-111). All monies for the completion of the real estate transaction had been deposited in escrow pending the resolution of Sugarhouse's judgment against Andersons (R. 109-110). Anderson was to receive approximately \$2,000 from the closing of the transaction (R. 90-91, 107). The existence of the real property and the pending real estate transaction was not disclosed to Sugarhouse (R. 91, 99-100).

After meeting with Respondent Anderson, Petty received a telephone call from a title company indicating that Anderson was in the process of selling a parcel of real property (R. 116). The title company requested a release from the Sugarhouse Finance Company judgment (R. 116). Mr. Petty declined to provide the title company with the requested release (R. 116).

On the morning of February 2, 1979, Sugarhouse returned the check for \$2,200.00 to Anderson by mail (R. 91, 116). Later that same date, Anderson telephoned Sugarhouse (R. 91, 115-116). Petty informed Anderson that his check had been returned and that Sugarhouse would not accept the check as settlement of the judgment as Anderson had not been

candid with him regarding Anderson's financial status during their settlement negotiations (R. 91, 100, 111, 117).

Respondent received the check by mail on February 3, 1979 (R. 38).

On February 8, 1978, Andersons filed a pleading in the same action, entitled "Motion", requesting the Court for "an order requiring the plaintiff to carry out and complete the terms of the settlement entered into by the parties on January 31, 1979" (R. 40-42). The Court heard Andersons' motion, as well as the Court's order in supplemental proceedings, on March 13, 1979. At the hearing, counsel for Sugarhouse objected to the hearing of Andersons' motion on the grounds that the matter was not properly before the Court, that a summary hearing of the issues presented in the motion was not proper, and that the Court lacked jurisdiction to entertain the issues raised by Andersons' motion (R. 63-64). The Court granted the Motion and entered Findings of Fact, Conclusions of Law, and Order to the effect that Sugarhouse must accept the sum of \$2,200.00 as full satisfaction of the judgment. On May 9, 1979, Sugarhouse moved the Court for a new trial and relief from the Court's order relating to the hearing of March 13, 1979 (R. 66-67). In response to Sugarhouse's motion, the Court held a hearing and thereafter entered Amended Findings of Fact and Conclusions of Law (R. 89-92).

ARGUMENT

POINT I. THE FINDINGS OF FACT DO NOT SUPPORT THE COURT'S CONCLUSIONS OF LAW AND ORDER.

The trial court entered certain findings in its Amended Findings of Fact and Conclusions of Law (R. 90-91). Pertinent to this appeal are all such Findings and Conclusions, but especially Findings 6, 7, 8 and 12, as follows:

6. At the time defendant was served with the supplemental order referred to in paragraph 2 hereof, defendant was anticipating the closing of a sale of real property in which he had one-half interest as a tenant in common, and from which defendant Eugene L. Anderson was to receive \$2,000 after payment of the underlying indebtedness.

7. Defendant Eugene L. Anderson knew that plaintiff's judgment had been docketed as a judgment lien upon all real property belonging to defendants or in which they had an interest in Sevier County.

8. Defendant Eugene L. Anderson did not disclose to President of plaintiff the fact that he had an interest in property, that the property had been sold, and that he was anticipating the closing of the sale of property and that defendant Eugene L. Anderson was to receive the sum of \$2,000 from the sale thereof. (R. 90-91.)

12. The agreement entered into by the parties on January 31, 1979, was based on an adequate consideration and was fully executed by each of them at the time of its inception. (R. 91.)

Finding No. 12 as quoted above of is actually a conclusion of law. There is no evidence nor are there findings to support a conclusion of consideration. This point is discussed in Point I.A of Appellant's Brief.

Findings of Fact Nos. 6 through 8, inclusive, together with the record which shows misrepresentation on

the part of Anderson, are cited as the basis of Point I.B of Appellant's Brief.

A. The Settlement Agreement Lacked Consideration to Support an Accord and Satisfaction.

On January 29, 1979, Anderson met with Sugarhouse's President, Mr. Neuman C. Petty, in an attempt to settle Sugarhouse's undisputed and liquidated judgment of December 17, 1976. Anderson informed Mr. Petty that he did not have any assets and was caught in a difficult financial situation. Based upon such representations (and others discussed in Point I.B hereof), Mr. Petty on behalf of Sugarhouse agreed to settle the judgment for a compromise sum of \$2,200.00. Upon reaching this agreement based upon Anderson's representations, Anderson tendered Sugarhouse a check for \$2,200.00. Anderson then informed Sugarhouse's President that he did not have sufficient funds in his account to cover the check. Anderson stated he would telephone Mr. Petty after contacting the bank and apprise Mr. Petty of whether or not the bank would honor the check. Anderson did not call Mr. Petty on February 1, 1979. Mr. Petty did not attempt to negotiate the check, but rather returned the settlement check to Anderson on the morning of February 2, 1979, and the check was received by Anderson on February 3, 1979. When Anderson telephoned Mr. Petty on February 2, 1979, Mr. Petty informed Anderson that the settlement agreement was rescinded and that the settlement check had previously been returned to Anderson.

An accord and satisfaction is a new contract between the debtor and creditor which must be supported by consideration as one of four essential elements of the contract. See Ralph A. Badger & Co. v. Fidelity Building & Loan Association, 94 Utah 97, 75 P.2d 669, 676 (1938). See also 1 Am.Jur.2d, Accord and Satisfaction, §12 at 310-311 (1962). With regard to the subject of consideration, the Badger court cited the rule as follows:

"An accord is an agreement between parties, one to give or perform, the other to receive or accept, such agreed payment or performance in satisfaction of a claim. The "satisfaction" is the consummation of such agreement. . . . Where the claim is definite and no dispute but an admittance of its owing, the agreement to take a lesser amount even followed by satisfaction is not good unless attended by some consideration." (75 P.2d at 676.)

See also F.M.A. Financial Corporation v. Build, Inc., 17 U.2d 80, 404 P.2d 670, 672-673 (1965); 1 Am.Jur.2d, Accord and Satisfaction, §12 at 310-311 (1962).

This Court in Tates, Inc. v. Little America Refining Co., 535 P.2d 1228 (Utah 1975), held that defendant's evidence failed to amount to an accord and satisfaction of the claim for the sale of a motor vehicle. Although the matter before the Court concerned a disputed claim, the Court articulated principles of law which are helpful in resolving the issue before this Court:

Ordinarily, the payment of part of a debt does not discharge it; and this is true even though the paying debtor exacts a promise that it will do so. The reason for this is that in making the part payment, the debtor is doing nothing more than he is legally obligated to do, and therefore he gives

the creditor no consideration for the promise that the part payment will be accepted to discharge the entire debt. (535 P.2d at 1229.)

The Court proceeded to hold that a further requirement of an accord and satisfaction is that there be a dispute or uncertainty as to the amount due. The case before this Court involves an undisputed, liquidated claim. Therefore, as a matter of law, a payment for less than the full amount does not constitute valid consideration. See also Clark Leasing Corp. v. White Sands Forest Products, Inc., 87 N.M. 451, 535 P.2d 1077, 1079 (1975), wherein the Court rejected the debtor's defense of accord and satisfaction for an undisputed, liquidated claim and held that "an agreement on the part of one to do what he is already legally bound to do is not sufficient consideration for the promise of another."

Similarly, the Court in Parmeter v. Delk, 433 S.W.2d 941 (Ct.Civ.App. Texas, 1968), held that the cashing of a check marked "payment in full" which was drawn for less than the full amount of the liquidated debt does not constitute an accord and satisfaction because it lacked consideration.

In case of liquidated claims, where the full amount of the claim is not paid and no additional or substituted consideration is shown, no accord or satisfaction results. . . . Also the mere payment and acceptance of a sum of money less than the amount of an undisputed indebtedness due, in full satisfaction of the debt, does not, for want of consideration, constitute an accord and satisfaction, and does not bar the creditor's suit to recover the balance. (433 S.W.2d at 944; citation omitted.)

In addition, Anderson tendered a check to Sugarhouse without sufficient funds to authorize the payment of the check from Anderson's bank account. It is well established that a worthless instrument has no value and does not constitute consideration for the purpose of establishing a contractual agreement. See Dakota Transfer & Storage Co. v. Merchants National Bank & Trust Co., 86 N.W.2d 639, 643, 644 (N.D. 1957); 11 Am.Jur.2d, Bills and Notes, §236 at 264 (1963).

The instant debt was an undisputed and liquidated claim as evidenced by the judgment of December 17, 1976. An agreement by Sugarhouse as creditor does not discharge the whole debt as the creditor receives what he is entitled to and there is no consideration for any new agreement. See F.M.A. Financial Corporation v. Build, Inc., supra, 404 P.2d at 672-73. A partial payment, although offered as payment in full, does not operate as a satisfaction. See F.M.A. Financial Corporation v. Build, Inc., supra, 404 P.2d 670 (1965); Ralph A. Badger & Co. v. Fidelity Building and Loan Association, supra; A. Corbin, 6 Corbin on Contracts, §1281 at 135 (1962).

The case before the Court presents no basis for a finding of consideration. There is no dispute to be settled as the amount in controversy is a liquidated, undisputed claim. In sum, the record is devoid of any new consideration by the debtor which would amount to an accord and

satisfaction. The tender of a check for an amount less than the full judgment is merely the performance, in part, of a present obligation, and does not constitute new consideration.

B. Any Settlement Agreement Between the Parties Was Tainted by Fraud, Misrepresentation or Deceit and Therefore Subject to Rescission.

Anderson and the President of Sugarhouse met to discuss the liquidated claim of Sugarhouse, namely the judgment of Sugarhouse against Anderson. Anderson represented to Petty that he was heavily in debt and did not have any assets. Based upon these representations and others, Sugarhouse agreed to accept \$2,200.00 as a full settlement of its judgment against Andersons. Anderson failed to disclose to Sugarhouse the fact that he was in the process of closing a real estate transaction from which he would personally realize approximately \$2,000.00. Sugarhouse was only apprised of Anderson's real estate holdings when Mr. Petty received a telephone call from the title company which was closing the transaction. At the time Anderson met with the President of Sugarhouse, Anderson was aware of the fact that Sugarhouse's judgment was a cloud upon the title of this property and the sale of the real property could not be closed until the judgment was satisfied.

Only Anderson and his business associates and agents were aware of the existence of the previously described real estate transaction. Sugarhouse relied upon

Anderson's representations that he had no assets as being true when Sugarhouse agreed to accept settlement of the judgment in an amount less than the judgment. Where such representations were untrue and known by Anderson to be untrue at the time they were made, the accord and satisfaction based upon such representation is not binding. See Ralph A. Badger & Co. v. Fidelity Building and Loan Association, 94 Utah 97, 75 P.2d 669, 679 (1938).

It is well established by Utah case law that an accord and satisfaction of a liquidated debt procured by fraud or misrepresentation is not binding upon the parties. In Ralph A. Badger & Co. v. Fidelity Building and Loan Association, supra, Badger brought an action to recover the difference between the face amount of a certificate and the amount Badger had received for the certificate from Atlas Realty Co., an agent of Fidelity. Badger's claim was for a liquidated amount as evidenced by the certificate and Fidelity admitted to owing Badger the stated amount. When the certificates matured, Badger sought to redeem the certificates for their stated value. Badger was informed that the certificates were not due and payable as there were \$50,000 of withdrawals ahead of Badger's certificate and, second, that Fidelity had decided to pay off certain creditors' obligations before disbursing funds for stock withdrawals. Fidelity

then offered fifty percent of the face value of the certificate in exchange for surrender of the certificate. The information conveyed to Badger was not true and Fidelity knew that it was not true. Badger relied upon the fraudulent information as evidenced by his surrendering of the certificate and accepting less than the full amount. Based upon the information conveyed to Badger this Court held as follows:

Where the accord and satisfaction relied upon was procured by fraud or misrepresentation . . . , it is not binding

We conclude, from what has been said, that there was no accord and satisfaction binding upon plaintiff, and that in the facts of this case, it would be highly unjust to permit the defendant to retain that which otherwise should have been paid to plaintiff. We do not find anything in the record that should estop plaintiff from recovering the balance unpaid on the certificate. . . . The records of the defendant revealed that plaintiff's certificate was due and payable and defendant had funds on hand with which to pay it. (75 P.2d at 678-9; citations omitted.)

To be valid, a contract of accord and satisfaction must have been consummated fairly and honestly; if procured by fraud or misrepresentation, it is voidable at the option and instance of the aggrieved party and may be rescinded upon discovery of the facts provided the aggrieved party acts promptly. 1 Am.Jur.2d, Accord and Satisfaction, §24 at 322-23, citing Ralph A. Badger & Co. v. Fidelity Building and Loan Association.

In Whitney v. Richards, 17 Utah 226, 53 P. 1122 (1898), Richards defaulted on a promissory note and pleaded accord and satisfaction as a defense to the collection action by Whitney. The alleged settlement agreement of the parties was based upon false representations by Richards. Whitney was informed by Richards that she would probably be unable to collect the liquidated amount of the note unless she agreed to the settlement. Real property was to be deeded to the creditor about which Richards made misrepresentations as to the value of the land, its potential rental value, and also failed to declare that the title was encumbered with trust deeds. The Court held that the alleged accord and satisfaction was obtained by fraudulent representations which Whitney relied upon and that such fraud authorized Whitney to disaffirm and rescind the settlement agreement.

It is hornbook law that fraud is a sufficient basis for the vacation or reformation of an accord. See A. Corbin, 6 Corbin on Contracts, §1292 at 178 (1962). See also 47 Am.Jur.2d, Judgments, §1036 at 113 (1969); Annot., Grounds for Vacation of Satisfaction of Judgment, 51 A.L.R. 243, 244 (1927). Where one party has superior means of ascertaining the facts relating to a settlement agreement and fails to disclose the true state of affairs to the other party, the lack of disclosure may be treated as fraud and

may constitute a basis for invalidating a compromise settlement. See Creson v. Carmody, 310 Ky. 861, 222 S.W.2d 935 (1949).

In this case, the Court specifically found that Anderson failed to disclose to Sugarhouse the fact that Andersons had assets and that the closing of a sale of the real property was awaiting satisfaction of the Sugarhouse judgment (R. 90-91). In addition, Anderson claimed to have no assets when in fact he had a substantial interest in the real property. He was to receive \$2,000 from the sale of four acres and would have eight acres left thereafter. Under all of the foregoing authority, the agreement of Sugarhouse, based upon Anderson's false misrepresentations, was subject to rescission at Sugarhouse's election. Notice of that election was timely given and Anderson's check returned.

The trial court's conclusions that the agreement was supported by consideration and was valid and binding must be reversed.

POINT II. ANDERSONS FAILED TO MEET THEIR BURDEN OF PLEADING AN ACCORD AND SATISFACTION.

After Sugarhouse rejected Anderson's settlement offer and returned their check on February 2, 1979, Andersons served Sugarhouse with a pleading entitled "Motion" which was supported by an affidavit, dated February 8, 1979. The motion was not made pursuant to any rule or statute, but

simply requested the Court "for an order requiring the plaintiff to carry out and complete the terms of the settlement entered into by the parties on January 31, 1979." Andersons appear to be relying upon an accord and satisfaction to obtain the equitable relief of specific performance. Professor Corbin defines the burden and requirements of proving such a doctrine.

Accord and satisfaction is properly an affirmative defense; it must be specifically pleaded and the burden of proof with respect to every element of it is on the party alleging it as a defense. (A. Corbin, Corbin on Contracts, §1280 at 134-5 (1962); footnote omitted.)

The elements of accord and satisfaction are enumerated in Ralph A. Badger & Co. v. Fidelity Building and Loan Association, 94 Utah 97, 75 P.2d 669 (1938), as follows:

(1) A proper subject matter, (2) competent parties, (3) an assent or meeting of the minds of the parties, and (4) a consideration. (75 P.2d at 676.)

In Simmons v. Langston, 241 Miss. 36, 128 So.2d 749 (1961), the Court, quoting Corbin on Contracts, held that the seller of an automobile was entitled to a deficiency judgment against the buyer for the balance due on a repossessed automobile when the buyer failed to carry his burden of proving an accord and satisfaction. The Court rejected buyer's arguments that an alleged conversation between buyer and seller wherein seller made arrangements to repossess the motor vehicle were sufficient to prove an accord and satisfaction.

The burden of proving an accord and satisfaction is upon one who maintains the affirmative of that issue. It is said that the evidence must be "clear and unequivocal" in order to support such a finding. . . . (128 So.2d at 750; citations omitted.)

Andersons were charged with maintaining the affirmative on the issue of proving an accord and satisfaction by clear and unequivocal evidence. Andersons' untitled motion of February 8, 1979, requesting the Court to enforce an alleged accord and satisfaction, appears to be inadequate on its face to satisfy the previously described burden. The motion and trial court record are devoid of any evidence of consideration that would satisfy the fourth element of the cause of action as described in Badger above. A record without clear and convincing evidence of consideration fails to satisfy the burden of the previously described authority and warrants a reversal of the trial court's order.

POINT III. APPELLANT WAS NOT AFFORDED AN OPPORTUNITY FOR DISCOVERY TO DETERMINE THE PARAMETERS OF RESPONDENTS' CAUSE OF ACTION

Sugarhouse obtained a judgment against Anderson for the default of a promissory note in the Third District Court, Civil No. 236307. On January 29, 1979, Anderson was served with an order in supplemental proceedings in the same case as the original cause of action.

Anderson, on his own initiative and without mandate of the Court, met informally with Mr. Petty of Sugarhouse on January 31, 1979, in an attempt to settle the

dispute. Based on Anderson's representations, the parties reached an agreement regarding satisfaction of the judgment. Anderson sought to enforce an alleged accord and satisfaction by serving Sugarhouse with a pleading entitled "Motion" requesting the Court "for an order requiring the plaintiff to carry out and complete the terms of the settlement entered into by the parties on January 31, 1979." No separate action was filed by Anderson to enforce the so-called "settlement" as the motion was pleaded in the same case in which appellant obtained a judgment against the respondent. No complaint was filed by respondent in addition to their motion. No authority was cited as the basis for filing such an action. Prior to the hearing on Anderson's motion, Sugarhouse was not afforded an opportunity for discovery to determine the extent of Anderson's assets and liabilities or otherwise engage in discovery regarding the substance of Andersons' motion. Sugarhouse's objections to the Court's lack of jurisdiction and improper procedures and hearing were rejected by the trial court.

This Court has held that the discovery provisions of the Utah Rules of Civil Procedure should be liberally construed to simplify and streamline trial procedures and to eliminate the element of surprise in all civil litigation. See Ellis v. Gilbert, 19 U.2d 189, 429 P.2d 39 (1967).

[The] purpose [of the Rules of Civil Procedure] is to make procedure as simple and efficient as possible by eliminating any useless ritual, undue rigidities, or technicalities which may have become engrafted in our law; and to remove elements of surprise or trickery so the parties and the court can determine the facts and resolve the issues as directly, fairly and expeditiously as possible. (429 P.2d at 40.)

The Court proceeded to quote from Rule 1(a) of the Utah Rules of Civil Procedure which prefaces the entire set of rules by stating that the rules "shall be liberally construed to secure the just, speedy and inexpensive determination of every action." (Emphasis added.)

In a case factually similar to Ellis, the Court noted that the "avowed purpose" of the rules of procedure "is to establish the 'truth' and require 'full disclosure'". See Ash v. Farwell, 37 F.R.D. 553, 555 (D.Kan. 1965). With reference to Rule 1 of the Federal Rules of Civil Procedure and Barron and Holtzoff, Federal Practice and Procedure, the Court noted that discovery "permits a more realistic appraisal of the case and undoubtedly leads to settlement of cases which otherwise would go to trial."

In commenting upon the propriety of the discovery request for the production of documents, the Court in Alseike v. Miller, 196 Kan. 547, 412 P.2d 1007 (1966), held as follows:

Discovery has a vital role in our code of civil procedure with its notice type pleading and its basic philosophy that mutual knowledge of all relevant facts is essential to the proper disposal

of litigation and that prior to trial every party to a civil action is entitled to disclosure of all such information in the possession of any person, unless the information is privileged . . . Our code of civil procedure is to be liberally construed to secure the just, speedy and inexpensive determination of every action (412 P.2d at 1014; citations omitted; emphasis added.)

Lawsuits to enforce an alleged accord and satisfaction are usually commenced by filing a complaint where the discovery rules and techniques are made available to all litigants. The procedural posture created by the filing of Andersons' motion and the Court's denial of Sugarhouse's objections to jurisdiction, procedure, mode of hearing and denial of discovery, did not afford Sugarhouse a "just" determination of "every action" as mandated by Rule 1 of the Utah Rules of Civil Procedure. The avowed purpose of the Rules was thwarted when Sugarhouse was unable to require the full disclosure through appropriate discovery of the nature of Andersons' case and an opportunity to determine the extent of their assets and liabilities.

The trial court's failure to apply the Rules of Civil Procedure to aid Sugarhouse in the defense of Andersons' action based upon an alleged accord and satisfaction, is a basic denial of a civil litigant's rights as codified by the Utah Rules of Civil Procedure.

CONCLUSION

Based upon the foregoing, Sugarhouse Finance Company prays for reversal of the trial court's order, or in

the alternative, for a new trial, and that Sugarhouse be awarded its costs.

DATED this 6th day of August, 1979.

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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of August, 1979, two true and correct copies of Appellant's Brief were mailed, postage prepaid, to H. Ralph Klemm, attorney for respondents, 510 Ten Broadway Building, Salt Lake City, Utah.
