

1979

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

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

SUGARHOUSE FINANCE COMPANY,
Plaintiff-Appellant,

-vs-

EUGENE L. ANDERSON and
COLLEEN W. ANDERSON,

Defendants-Respondents,

Case No. 16462

BRIEF OF RESPONDENTS

ON APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT OF
SALT LAKE COUNTY, STATE OF UTAH

HONORABLE CHRISTINE M. DURHAM

District Judge

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96 ALR 1133

IN THE SUPREME COURT OF THE STATE OF UTAH

SUGARHOUSE FINANCE COMPANY,
Plaintiff-Appellant,

-vs-

EUGENE L. ANDERSON and
COLLEEN W. ANDERSON,
Defendants-Respondents.

Case No. 16462

BRIEF OF RESPONDENTS

NATURE OF THE CASE

This case involves the validity and effect of a settlement agreement entered into by the parties on January 31, 1979.

DISPOSITION IN LOWER COURT

The District Court held that the settlement agreement was binding on the parties and entered its Order requiring the plaintiff to carry out and complete the terms of that settlement.

RELIEF SOUGHT ON APPEAL

Appellant seeks a reversal of the District Court's ruling that the settlement agreement was valid and enforceable between the parties. In the alternative, appellant seeks a new trial in this action.

STATEMENT OF THE FACTS

Based upon the failure of defendants to answer plaintiff's Interrogatories, the District Court of Salt Lake County entered judgment

against the defendants on December 17, 1976, in the sum of \$2,423 plus interest, attorney's fees and court costs. (R.22-3, 58) A major portion of that judgment remained unpaid in January, 1979. (R.58, 95)

On January 29, 1979, the defendants were served at their residence in Salina, Utah, with a Motion and Order in Supplemental Proceedings requiring them to appear before the court in Salt Lake County on February 20, 1979. (R.58, 95) Two days later, on January 31, 1979, defendant Eugene L. Anderson traveled to Salt Lake City to meet with Mr. Newman C. Petty, the owner and presiding officer of the plaintiff's finance company, concerning the amount due on the judgment. His purpose was to try to settle and satisfy the amount due and owing to the plaintiff on the judgment. (R.38,58, 95, 114)

Because of a serious automobile accident that occurred in April, 1978, defendants were in dire financial difficulty at the time of that visit. Mr. Anderson had been hospitalized for one month, and he had been unable to work at his service station for an additional month because of the injuries he received in the accident. (R.101-103) His unpaid medical bills amounted to over \$9,000.00, and his additional obligations exceeded \$30,000.00 at that time. (R.101-103)

Anderson told Petty about his accident and about his financial difficulties when he met with him at his office in Salt Lake City to discuss the obligation. (R.95-6) Anderson had never had any other judgments against him, and he wanted to get this one settled. (R.113)

After some discussion about Anderson's ability to pay the amount due, including comments about possible bankruptcy, the parties reached a settlement agreement. Under its terms, plaintiff agreed to accept the sum of \$2,200.00 in full payment and satisfaction of the existing judgment. (R.38, 59, 96, 115)

Anderson then made and delivered his check in the sum of \$2,200.00 to Mr. Petty in full payment of the settlement amount. The check was drawn on Zion's First National Bank, Salina, Utah, and the purpose of payment was stated on the check in the following language: "Payment in full judgment civil # 236207." (Exhibit 1, R.38, 59, 96)

Anderson requested that Petty retain the check for two days while he made arrangements for the check to clear the bank. (R.59,97, 115) After those arrangements had been completed, Anderson called Petty to tell him the check would clear. (R.59, 104-106) At the time of that call, Petty notified Anderson that he had decided not to accept the settlement and that he would return the check by mail. (R.39, 59, 100) Anderson received the check in Salina the following day. (R.39, 100)

Mr. Petty revoked the settlement agreement when he learned that Anderson had some money coming from the sale of some real property in Salina, Utah. (R.116-117) Mr. Anderson had made arrangements to sell two acres of property in association with a co-owner, but he was to receive only \$2,000.00 from the transaction. That amount was to be used to pay some of the many bills he owed at that time. (R.107-8, 116)

Thereafter, the defendants filed their Motion for an Order requiring the plaintiff to carry out and complete the terms of the settlement referred to above. (R.40) The Affidavit of Eugene L. Anderson was filed in support of that Motion. (R.38-9) Hearing on the Motion was first set for Thursday, February 15, 1979, but was continued on stipulation of the parties to March 13, 1979. Based upon the oral and documentary evidence submitted by the parties at the hearing, the court entered its Findings of Fact and Conclusion of Law and then ordered that defendants' Motion should be granted. The Order also required that defendants immediately pay the plaintiff the sum of \$2,200.00 in the form of a Cashier's Check to represent full settlement and satisfaction of the judgment previously entered by the court. Plaintiff was required by the Order to enter Satisfaction of Judgment when payment was received. The Findings and the Order were signed on April 13, 1979. (R.58,61)

The Cashier's Check was delivered to the office of plaintiff's counsel on March 16, 1979, and he retained possession of the check for a period of 54 days before returning to defendants' counsel on May 9, 1979. (R.71-2) Upon motion of the plaintiff, the Findings of Fact and Conclusions of Law were amended by the court on June 1, 1979. (R.89-92)

Notice of Appeal was timely filed, and plaintiff asks the Supreme Court for relief from the legal effect of the settlement agreement.

ARGUMENT

POINT NO. I

THE SETTLEMENT AGREEMENT ENTERED
INTO BY THE PARTIES WAS SUPPORTED
BY ADEQUATE CONSIDERATION

The trial court found that the agreement formulated by the parties on January 3, 1979, was based upon an adequate consideration. (R.91) Appellant asserts on this appeal that the evidence adduced at the hearing on respondents' Motion to require appellant to carry out and complete the terms of the settlement does not support that finding. On this basis, appellant seeks reversal of the Order entered by the District Court.

The general common-law rule pertaining to accord and satisfaction provides that an agreement by a creditor to accept part payment of a liquidated debt as payment in full does not discharge the whole debt unless it is supported by a new and additional consideration. FMA Financial Corporation v. Build, Inc., 17 U.2d 80, 404 P.2d 670(1965).

The Utah court has recognized that rigid application of this rule can occasionally result in great inequity. In the FMA case, the court noted that the modern trend in the courts is to find a consideration somewhere in the new arrangement between the parties. The language of the court, found on page 673, recognizes that the courts now follow the more equitable result in such cases:

"It is true that the modern trend is to be cautious about rigidly applying this rule and that courts are generally somewhat indulgent toward finding consideration somewhere in the new arrangement, such as that it was to settle a dispute, or that there is some advantage to the creditor in accepting the lesser amount, where the unreasoning adherence to the rule might result in inequity."

In another case, the Utah court has recognized that there may be varying circumstances in which the debtor is induced by the request of the creditor to make payment in some manner other than he is obligated to do. If he is so induced, and if he suffers some legal detriment in making the payment, there is consideration for the promise, the debt is discharged. See Tates v. Little American Refining Corp., 535 P.2d 1228(1975). In 1 Am Jur 2d, Accord and Satisfaction, §11, p.311, the author states that the general rule is not looked upon with favor by the court and that the application of exceptions to this rule have been more numerous than those of the rule itself, the court relying upon slight circumstances to take the cases away from the operation of the rule. In §35, the author states that the rule has been much criticized and condemned and many exceptions have been made to avoid the injustice and inequity that frequently result from strict enforcement of the rule. Referring to the requirement of additional consideration, the author gives the following explanation:

"Whether or not the basis of the rule as it was originally adopted was lack of consideration, it is evident that the theory of the rule as it obtains at the present time is one of consideration for the discharge of the residue of the debt, and if some consideration which is new or collateral to the partial payment enters into the agreement, it will, when executed, be upheld as good accord and satisfaction. The collateral or additional consideration may consist of anything which would be a burden or inconvenience to the one party or a possible benefit to the other, the fact that it is significant or technical being immaterial."

Some of the courts have even allowed the insolvency of the debtor to act as sufficient consideration to uphold the new agreement to accept the lesser amount. In 1 Am Jur 2d, Accord and Satisfaction

§38, p.337, the author discusses the effect of insolvency of the debtor as follows:

"Where the debtor is known to the creditor to be insolvent, and the creditor, in consideration of such fact, agrees to and does accept part payment of a liquidated demand (at least one which is dischargeable in bankruptcy) in full satisfaction, the courts generally hold that the rule that a liquidated and matured debt is not discharged by the payment and acceptance of a less sum in satisfaction is not applicable, and the transaction will be upheld as a good accord and satisfaction, even though it is subsequently proven that the debtor was not insolvent."

In an older annotation found in 96 ALR 1133 pertaining to the general rule, the author discusses the adequacy of consideration for a promise to accept less than the full amount in full payment as follows:

"...However, it is well settled that if there is any benefit to the creditor, or detriment to the debtor, resulting from the new contract, a consideration sufficient to support it exists."

In the case now before the court, there was sufficient consideration to support the promise of the appellant to accept a lesser amount in payment of the judgment pending against the respondents. Unrefuted evidence shows that Eugene L. Anderson was injured in an accident on April 13, 1978, which required that he be hospitalized for a long period of time. In addition, he was away from his business for an additional period of time after he was released from the hospital. To make matters worse, his service station business was not doing well. He had been unable to support his family during the previous year, and his obligations were well over \$30,000.00, in addition to the medical expenses resulting from the accident. (R.101-103)

In order to obtain the funds needed to pay the settlement amount, Anderson told Petty that he would arrange for a loan at a local bank. These arrangements were completed so that immediate payment of the settlement amount could be made.

The original judgment had been entered by the court on December 17, 1976. In the previous two years, the appellant had with little success in collecting the amount of the judgment. The settlement agreement between the parties provided for immediate payment of a substantial amount of that judgment. The appellant was thereby relieved of further efforts to collect the amount due. Sentimental, Garnishment and Execution proceedings were no longer needed and appellant could close its books on this account and direct its efforts to collection of other pending judgments and accounts. The respondents, on the other hand, had to look forward to the payment of the loan, including any interest connected therewith, as a substantial addition to the satisfied judgment. The settlement agreement formulated by the parties in this instance involved the advantage of immediate payment to the plaintiff and the disadvantage of loan arrangements to the defendants. Under both the letter and the spirit of the modern law recognized by the Utah court in the case of FMA Financial Corporation v. Build, Inc., supra, there was sufficient and adequate consideration to support the agreement of the parties for accord and satisfaction of the judgment pending in this action.

Appellant relies primarily on the case of Ralph A. Badger and Company v. Fidelity Building and Loan Association, 94 U 97, 75 P.2d 669(1968) in support of its position in this case. Respondents do not disagree with the principles laid down in that case, but they hasten to point out that the case turned more on the fraud of the defendant than on lack of consideration. The defendant building and loan association had adopted a policy under which it had ceased to accept and pay amounts owing on stock withdrawals and had used its income for other purposes. When plaintiff presented his stock certificate for payment, he was fraudulently informed that it was not yet due and payable and that other certificates having an aggregate value of \$50,000.00 had to be paid ahead of his. These representations were clearly false. The plaintiff then sold the certificate for one-half of its true value to a third party who turned out to be an agent of the defendant who was using defendant's money to buy the certificates at the discounted rate. The entire arrangement was designed to purchase the stock withdrawals at less than their face values. The defendant was guilty of serious fraud, and the court emphasized the facts relating thereto.

The circumstances of this case show sufficient consideration to support the parties' settlement agreement. The adverse financial situation of the defendants and their need to obtain a loan to pay off the settlement amount was adequate consideration to support their side of the settlement agreement. On the other hand, the promise of an immediate return to the plaintiff gave sufficient benefit to make the agreement of the parties binding and enforceable.

POINT NO. II

DEFENDANTS WERE GUILTY OF NO FRAUD,
MISREPRESENTATION OR DECEIT IN
PROCURING THE SETTLEMENT AGREEMENT.

There is no evidence in the record to support appellant's contention that the settlement agreement between the parties was tainted by fraud, misrepresentation, or deceit.

Newman Petty testified that he rescinded the settlement agreement because he received a telephone call from a title company advising him that Mr. Anderson was attempting to sell some real property in Salina, Utah. (R.116) Anderson admitted that he had arranged for the sale of certain real property in concert with its co-owner, Mr. Keith Cannon, but he further testified that the total amount that he would realize from the sale was in the sum of \$2,000. He was intending to use that amount to pay off some of the other bills that he owed. (R.107-8) The sum expected from the sale was not sufficient to change the circumstances of the defendants when the meeting with Mr. Petty was held. They were still in dire financial straits, having at least \$39,000.00 pending in outstanding obligations. The small amount to be received at the sale was earmarked to hold off other creditors who were threatening to take court action against the Andersons. Those funds had apparently been pledged to cover other debts because Anderson still was required to obtain a loan to pay the amount promised to the Sugarhouse Finance Company. The amount realized from the sale probably made it possible for Anderson to obtain the loan needed to satisfy the judgment.

Appellant contends in its brief on appeal that defendnat Eugene Anderson testified that he had no assets whatsoever. A careful review of the evidence about the meeting of the parties reveals no testimony to this effect. Both of the parties testified that Mr. Anderson discussed his dire financial circumstances. Anyone familiar with bankruptcy proceedings must recognize that even persons who are adjudged to be insolvent may nevertheless possess numerous assets. In this instance, the problem was created by the large number of obligations that had accumulated because of the accident of Mr. Anderson and the decrease in income from his business. The record reveals no statements about the lack of assets on the part of the defendants.

It is elementary under Utah law that allegations of fraud must be shown by clear and convincing evidence and will not lie in mere suspicion or inuendo. See Lundstrom v. Radio Corporation of America, 405 P.2d 339, 17 U.2d 114, 14 ALR 3rd 1058. The question as to whether Eugene Anderson had dealt fraudulently with the plaintiff was an issue of fact that was resolved by the court after hearing the evidence adduced at the hearing on defendants' Motion. Although the court found that Mr. Anderson was anticipating the sale of certain real property in Sevier County when he went to see Mr. Petty, the court also found that his actions were not fraudulent in any way. In other words, the plaintiff failed to show by clear and convincing evidence that Mr. Anderson defrauded the plaintiff.

The decision of the fact finder must stand unless the decision was clearly erroneous. The Utah Supreme Court has held that in an action at law the question on appeal is not whether the evidence would have supported a judgment in favor of the appellant, but whether the judgment entered by the trial court finds support in the evidence. Green v. Equitable Life Assurance Society of the U. S., 284 P.2d 61, 3 U.2d 375. The Supreme Court will not disturb the findings of fact of the lower court when the evidence, when viewed in a light most favorable to the winning party, is sufficient to sustain such findings. See Gibbons & Reed Company v. Guthrie, 256 P.2d 706, 123 U 172.

The Supreme Court has repeatedly held that if there is substantial evidence to support a judgment of the court below in an action at law, the Supreme Court will affirm. Leon Glazier & Sons Inc. v. Larsen, 491 P.2d 226, 26 U.2d 429. The Supreme Court review in such cases is limited to the determination of whether or not there is competent evidence to support the judgment of the trial court. Dalbey v. George Romney & Sons Company, 184 P.2d 211, 111 U 471.

The evidence pertaining to the question of fraud, when viewed in a light most favorable to the respondents, is clearly sufficient to support the judgment of the District Court. The amount to be received from the sale of property was only a drop in the bucket when compared with the impending obligations of the Anderson family. The failures to reveal the facts surrounding the sale of that property made no difference whatsoever to the settlement agreement, and would not have affected the outcome of the negotiations between the parties.

The evidence pertaining to the question of consideration, when viewed in a light most favorable to the respondents, is also sufficient to support the judgment of the District Court. It is undisputed that the defendants were in dire financial circumstances at the time of the settlement agreement, and no one questions the Anderson testimony that it was necessary for him to obtain an loan to pay the settlement amount. The court can take judicial notice of the fact that no further collection efforts would be necessary once the settlement amount was paid. The evidence is sufficient to support the Order of the court, and that decision should be upheld by this court on appeal.

POINT NO. III

APPELLANT HAD AMPLE OPPORTUNITY TO
CONDUCT DISCOVERY PROCEEDINGS PRIOR
TO THE HEARING ON DEFENDANTS' MOTION.

The appellant claims on this appeal that it was afforded no opportunity for discovery work prior to the hearing on the Motion filed by the respondents. The record shows no attempt by the plaintiff to initiate any discovery procedures prior to the hearing on March 13, 1979. When the hearing convened, counsel for appellant objected to further proceedings on the ground that he had not had opportunity to complete his discovery work. Of course, this objection was overruled.

The record shows that respondents' Motion was filed on February 8, 1979. Hearing was first scheduled on February 15, 1979, but was continued upon stipulation of the parties until March 13, 1979.

A period of 33 days passed between the filing of the Motion and the hearing held by the court. The Motion was supported by the Affidavit of defendant Eugene L. Anderson, and his contentions were clearly before the court and the appellant at that time. Any necessary discovery work by the appellant was ignored until the time of the hearing. Interrogatories were filed, no Depositions were scheduled, no Requests for Admissions were made, and no other steps were taken to carry out the discovery proceedings available to the appellant under the Utah Rules of Civil Procedure.

The courts have always required the parties to act with dispatch and diligence in litigation matters. The party desiring to take advantage of the discovery procedures must take the initiative to go forward with the preparation of his case. Arrangements for preparation lie in the hands of counsel and not in the hands of the court. It is noteworthy that the appellant didn't even subpoena any witnesses to the hearing. The only witness called to testify on the appellant's behalf was defendant Eugene L. Anderson, who was called for cross-examination purposes only. The problems related to lack of discovery in the matter now before the court were caused by the lack of diligence on the part of the appellant and not because of any error on the part of the court.

POINT NO. IV

DEFENDANTS FOLLOWED PROPER
PLEADING PROCEDURE IN
CONNECTION WITH THIS ACTION.

Appellant complains in its Brief that defendants' Motion for an Order requiring the plaintiff to carry out and complete the terms of a settlement entered into by the parties on January 31, 1979, did not comply with established pleading procedure because it was not made pursuant to any rule or statute. This contention has no merit because the Motion conforms to the provisions of Rule 60, Utah Rules of Civil Procedure. Paragraph (b) of that Rule provides, in pertinent part, as follows:

"On motion and upon such term as are just, the court may in the futherance of justice relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons . . . (6) the judgment has been satisfied, released, or discharged, . . . or it is no longer equitable that the judgment should have prospective applications; . . . The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these Rules or by an independent action."


The above Rule defines the procedure that must be followed in cases like the one before the court. The Motion was proper, and the court had adequate jurisdiction to proceed with the resolution of the problem raised by the parties.

CONCLUSION

For reasons set forth above, the decision and Order of the District Court requiring the plaintiff to complete and carry out the settlement agreement should be affirmed,

DATED this 23rd day of October, 1979.

RESPECTFULLY SUBMITTED,

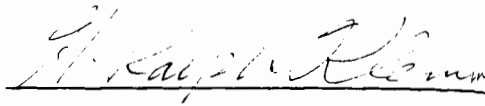


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Attorney for Respondents

NOTICE OF SERVICE

The foregoing Brief on Appeal was served upon the appellee by mailing two copies thereof to its attorneys, Moyle & Draper, 600 Deseret Plaza, Salt Lake City, Utah, 84111, by United States Mail, postage prepaid, this 24th day of October, 1979.


J. Keith Brown