

1980

Sugarhouse Finance Company v. Eugene L. Anderson And Colleen W. Anderson : Petition For Rehearing And Brief In Support Thereof

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,)

Defendants-Respondents.)

PETITION FOR REHEARING
AND BRIEF IN SUPPORT THEREOF

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PETITION FOR REHEARING

Case No. 16462

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PRELIMINARY STATEMENT

Sugarhouse Finance Company, plaintiff-appellant, respectfully petitions this Court for a rehearing of the decision in the above referenced matter filed April 15, 1980.

The issue before this Court on appeal was the validity and enforceability of an alleged accord and satisfaction of a judgment entered in favor of appellant in 1976. In an opinion by Justice Hall, the Court held:

(a) Defendant's petition for judicial relief from plaintiff's judgment was procedurally proper and properly placed the issue before the trial court;

(b) the accord and satisfaction was supported by adequate consideration; and

(c) defendant's failure to state that he owned property located in Sevier County and failed to disclose the sale of a portion thereof did not render the accord and satisfaction voidable by reason of fraudulent inducement.

This Petition for Rehearing addresses the Court's holding with respect to b and c, above, only.

POINT I. THIS COURT HAS IMPROPERLY SUBSTITUTED ITS FINDINGS FOR THE FINDINGS OF THE TRIAL COURT.

This Court found or assumed "facts" which (1) were not found by the trial court, and/or (2) are not supported by any evidence in the record. This is error.

A. The Trial Court Made No Finding Of A Loan.

The trial court made no finding that defendants had negotiated a loan and that such loan was the source of funds to be paid plaintiff. The Trial Court's findings regarding the check delivered to plaintiff were (1) that "defendant then requested that Mr. Petty retain the check for two days while he made arrangements for the check to clear the bank," and (2) "two days later ... defendant notified Neuman C. Petty by telephone that arrangements had been made for the check to clear the bank" (Findings 10 and 11, R. 91). The trial court's findings did not include findings as to the "arrangements," whether from the defendants' own funds or from some other source.

In contrast to the findings of the trial court, this Court stated:

Pursuant to the parties' conversation of January 31, 1979, defendant agreed that, for a release of the judgment upon payment of a lesser agreed amount, he would negotiate a loan with a third party to enable him to pay off the substitute obligation immediately. (Supreme Court opinion, p. 4., emphasis added.)

We note that, in the present case, defendant agreed to incur additional indebtedness pursuant to the terms of the accord, in reliance on plaintiff's promise to accept immediate payment of a lesser amount in full satisfaction of the underlying obligation. (Supreme Court opinion, p. 5., emphasis added.)

The foregoing findings are inconsistent with those of the trial court. As such, this Court has substituted its judgment for findings of the trial court, the finder of fact. This is error.

The evidence, viewed in the light most favorable to defendants, shows the arrangements made by defendant with Zions National Bank were that the bank would honor defendant's check when it was presented for payment. Had the check been presented for payment, the bank would have made a loan to defendants. However, the check was never presented to the bank for payment and therefore no loan was ever made to defendants. Thus the supposed consideration to support the accord and satisfaction failed.

B. The Trial Court Made No Finding That Defendants Agreed To Obtain A Loan.

The parties agreed that plaintiff would accept the sum of \$2,200 in full settlement and satisfaction of the judgment, whereupon defendant made and delivered his check in said sum (Findings 5 and 6, R. 90). The agreement was for defendants to pay what they were already legally obligated to pay plaintiff, which does not constitute new or adequate consideration.

Notwithstanding the absence of any finding by the trial court of an agreement to obtain a loan, this Court in its opinion at least twice referred to such an agreement. See Point I.A, above.

Even if the agreement were that defendant would obtain a loan from the bank, defendant did not fulfill the promise or agreement because defendant, at most, arranged for the bank to

honor his check when presented for payment. The check was never presented; thus, the loan was never made.

C. The Trial Court Made No Finding Of Detriment Or Injustice To The Defendants.

There is no evidence to support a finding of detriment to the defendants, referred to in this Court's opinion (Supreme Court opinion, p. 5). Defendants suffered no legal detriment since no loan was ever made to them by the bank.

Since the trial court made no finding of detriment and since there is no evidence to support such a finding, the agreement was not supported by consideration. This Court should so hold.

POINT II. THE BURDEN OF PROVING AN ACCORD AND SATISFACTION WAS ON DEFENDANTS; THIS COURT PLACED THE BURDEN ON PLAINTIFF

The burden of proving an accord and satisfaction is on the party claiming it. A sufficient defense thereto is a showing that it was not entered into fairly and honestly. The trial court's findings, especially 6, 7, 8 and 9, conclusively establish that the accord and satisfaction was not consummated fairly and honestly. Instead, this Court has placed upon plaintiff the burden of establishing fraud, relieving defendants of the burden which is theirs. This is error.

POINT III. THIS COURT ERRED IN HOLDING DEFENDANT HAD NO DUTY TO DISCLOSE DEFENDANTS' PROPERTY AND THAT THE TITLE COMPANY WAS HOLDING MONEY PENDING THE RESOLUTION OF PLAINTIFF'S JUDGMENT.

This Court held defendant had no duty to disclose to plaintiff the defendant's property and the sale thereof. Under

the circumstances of this case, such holding is erroneous, for the following reasons:

A. The Particular Circumstances in this Case Imposed Upon Defendant a Duty to Speak.

Defendant Eugene L. Anderson was served with a motion and order in Supplemental Proceedings requiring him to personally appear before the Trial Court on February 20, 1979. As such, he was under court order to appear and testify regarding his property. Defendant Anderson was anticipating the closing of a sale of real property in which he had a one-half interest as a tenant in common, and from which he was to receive \$2,000 after payment of the underlying indebtedness (Finding 6, R. 90). Defendant 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 (Finding 7, R. 90). The purchase price for the property had actually been received by the title company, and the amount had been paid to obtain a conveyance of the property being sold from a larger parcel which defendant was purchasing. The \$2,000 that was to be the defendant's share from the sale was being held by the title company because of plaintiff's judgment (Tr. 17, 19). In that sense, the money being held actually belonged to plaintiff as a result of its judgment lien.

Because defendant knew the title company was holding money because of plaintiff's judgment lien, defendant had a duty to disclose such fact to plaintiff, which defendant knew was without knowledge of such fact.

Defendant's duty to disclose also arises because of the Order in Supplemental Proceedings. Defendant was under court order to appear and testify under oath regarding his property. Defendant knew he would be required to testify regarding his property, including the fact of the sale. Defendant withheld or concealed the facts to reach a settlement with plaintiff so he would not have to appear for the Order in Supplemental Proceedings.

B. Having Made Representations, Defendant Was Under a Duty to Reveal, Fully and Fairly, the Facts.

Having discussed his financial condition with plaintiff, defendant was under a duty to give a complete and fair disclosure. Defendants' disclosure to plaintiff was incomplete.

C. Defendant Had a Duty to Speak Because the Facts Were Not Equally Knowable to Both Parties.

Where the facts are not equally within the means and knowledge of both parties, there is a duty of disclosure by the party with superior knowledge. This obligation was on defendant in this case.

POINT IV. THIS COURT ERRED IN NOT HOLDING THAT DEFENDANTS STATEMENTS WERE MISLEADING AND MISREPRESENTED THE FACTS AND LAW; DEFENDANTS BANKRUPTCY WOULD NOT HAVE DISCHARGED PLAINTIFF'S JUDGMENT LIEN UPON THE REAL PROPERTY.

In the course of the conversation between plaintiff and defendant regarding settlement of the judgment against defendants, Eugene Anderson "asserted that he was contemplating bankruptcy, and that such a measure would result in plaintiff's judgment being discharged." Plaintiff's judgment had been doc-

keted as a judgment lien upon all real property belonging to defendants or in which they had an interest in Sevier County. This was the only judgment lien docketed against defendant's real property. Defendants statement regarding the effect of bankruptcy upon plaintiff's judgment was false and misleading. In terms of the bankruptcy law, plaintiff was a secured creditor, its claim secured by a judgment lien on defendant's real property. Bankruptcy would not discharge the judgment lien. This Court's opinion would give sanction to this misstatement, a result which should not be intended. Because of the misstatement, intentional or unintentional, the agreement was voidable and plaintiff voided the contract. This Court should have so held.

CONCLUSION

Sugarhouse Finance Company respectfully requests a rehearing of this case, for the foregoing reasons. This Petition is supported by a Brief in Support of Petition for Rehearing.

Respectfully submitted this 6th day of May, 1980.

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