

1980

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

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,)
Defendant-Repondent.

Case No. 16462

REPLY BRIEF

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

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Cases Cited

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Other Authorities Cited

1 <u>Am.Jur.2d</u> , Accord and Satisfaction, §24	5
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REPLY BRIEF

Plaintiff-appellant Sugarhouse Finance Company replies
to the brief of respondents:

POINT I. THE SETTLEMENT AGREEMENT MUST FAIL FOR LACK OF
CONSIDERATION AND MEETING OF THE MINDS.

Respondents in their brief acknowledge the rule per-
taining to accord and satisfaction that "an agreement by a
creditor to accept part payment of the liquidated debt as pay-
ment in full does not discharge the whole debt unless it is
supported by a new and additional consideration." (Brief of
Respondent, page 5.) Respondents rely upon FMA Financial Corp.
v. Build, Inc., 17 Utah 2d 80, 404 P.2d 670 (1965) and Tates,
Inc. v Little America Refining Co., 535 P.2d 1228 (Utah 1975),
to support their contention that the acknowledged rule should
not be applied to the facts of this case. The contention is
not supported by the cases cited nor the facts of this case.

First, this Court in both FMA and Tates held that there was not an accord and satisfaction. In Tates, this Court reversed the trial court's finding of accord and satisfaction. Second, the particular facts of each case may be considered, but new consideration for an agreement to accept a lesser amount must be found. In FMA this Court stated:

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 a lesser amount, where the unreasoning adherence to the rule might result in inequity. (Footnote omitted.)

In Tates, Inc., this Court stated:

The proposition upon which the claimed accord and satisfaction appears to rest is that under the total circumstances described above, the plaintiff either knew, or should be deemed to have known, that the check was being offered in full satisfaction of the debt. But such a supposition is not sufficient to meet the requirements of the rules set forth in the authorities hereinabove referred to: that to bind the plaintiff to a new contract, it must be made to appear that it was clearly so understood and agreed. (Footnote omitted.)

There is no new consideration between Andersons and Sugarhouse Finance Company.

Third, there must be a meeting of the minds of the parties. Eugene Anderson failed to disclose that he owned certain real property, the sale of which was eminent, from which he would receive \$2,000 cash and retain a portion of the property. The judgment lien of Sugarhouse Finance Company was the only lien upon the property. Because Anderson failed to disclose this information, there could be no meeting of the minds of the parties. Anderson's purpose in traveling to Salt Lake

City was to discuss the judgment with Sugarhouse's president and, based upon his financial condition, to settle the judgment by paying a lesser amount. The financial condition of the Andersons was considered by Sugarhouse's president, but Anderson did not disclose the ownership of the property, its impending sale, nor the amount to be received by Anderson from the sale. The mutual basis of Anderson requesting, and Sugarhouse considering, a settlement of the judgment was the Andersons' financial condition. For there to be a meeting of the minds, in these circumstances, required Anderson to disclose to Sugarhouse the property and status of the transaction for its sale.

Assuming, for purpose of argument only, that the Andersons' agreement or promise to pay \$2,200 as full payment and satisfaction of the judgment was adequate consideration to support an agreement with Sugarhouse, in view of the Andersons' other indebtedness, it does not follow that the Andersons' ownership of the property and the imminence of its sale can be disregarded. Respondents rely on their financial circumstances, and their agreement in view of those circumstances to pay \$2,200, as the basis for a claim of new consideration. The very heart of the argument is that the financial circumstance is the basis for finding consideration. This underscores the importance and requirement of Andersons disclosing their full circumstances, particularly the ownership of property and its anticipated sale.

The trial Court's findings clearly show that the plaintiff was not aware of all of the pertinent facts:

6. At the time the defendant was served with supplemental order referred to in paragraph 2 hereof, defendant 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 defendant Eugene L. Anderson was to receive \$2,000 after payment of the underlying indebtedness.

7. 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 the 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.

9. Defendants have no other judgments against them which are docketed as judgment liens against real property owned by them in the County of Sevier, Utah.

In view of (1) plaintiff's judgment, (2) the supplemental order of the Court which required Eugene L. Anderson to appear and answer concerning his property, (3) Anderson's ownership of property, (4) the anticipated sale of the property, (5) the anticipated net proceeds from the sale, (6) plaintiff's judgment lien against the property, and (7) the absence of any other judgment lien against the property, the ownership of property by the Andersons and the pending sale thereof cannot be dismissed or disregarded as insignificant. Rather, the plaintiff was entitled to consider the Anderson's settlement proposal based on all of the material and relevant facts, not just those which Eugene L. Anderson wanted to divulge. If plaintiff, with knowledge of all pertinent and relevant facts, then decided to accept the settlement proposal, the Andersons might have an arguable position. However, in absence

of such a state of facts, Sugarhouse was not obligated to proceed with the settlement agreement.

The facts of this case do not warrant a finding of consideration. Further, there could be no binding agreement because there was no meeting of the minds of the parties as to the terms of the agreement. Rather, to so find would work a gross inequity against Sugarhouse which was given a state of facts by Anderson and relied thereon, when the facts were false or incomplete.

POINT II. THE ALLEGED ACCORD AND SATISFACTION WAS NOT ENTERED INTO FAIRLY AND HONESTLY; SUGARHOUSE WAS ENTITLED TO RESCIND UPON DISCOVERY OF THE FACTS.

The general rule of the obligation of fairness between the parties is stated as follows:

To be valid, a contract of accord and satisfaction must have been consummated fairly and honestly; if procured by fraud, misrepresentation, duress, imposition, overreaching, coercion or compulsion, 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, Section 24.

There can be no question that Sugarhouse Finance Company acted promptly. The facts show that upon receiving information regarding the true state of affairs, the president of Sugarhouse Finance Company put the Anderson check in the mail and notified Eugene L. Anderson of that action and the rejection of any agreement on the same day. Those actions took place within two days of the conversation between Anderson and Sugarhouse's president.

As discussed in Point I, above, Eugene Anderson did not disclose to Sugarhouse the fact that he owned property and that he anticipated its sale, from which he would receive \$2,000.

CONCLUSION

There can be no finding of accord and satisfaction because (1) the payment of part of a debt does not discharge it, even if the judgment creditor agrees that it will do so, and (2) 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. 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 attributed as fraud and may constitute a basis for invalidating a compromise settlement. The undisputed facts of this case require reversal of the trial court.

DATED this _____ day of _____, 1980.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the ____ day of March, 1980, I served a copy of the attached Reply Brief by mailing two copies thereof in a securely sealed, postage paid envelope to the following at the addresses indicated which are the last addresses known to me:

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