

1979

Aird Insurance Agency v. Zions First National Bank : Brief of Plaintiff-Appellant

Utah Supreme Court

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For the Plaintiff-Appellant: Clifford V. Dunn;

For the Defendant-Respondent: Clifford W. Price;

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IN THE SUPREME COURT OF THE
STATE OF UTAH

AIRD INSURANCE AGENCY,
Plaintiff - Appellant,

BRIEF OF
PLAINTIFF - APPELLANT

vs

ZIONS FIRST NATIONAL BANK,
Defendant - Respondent.

District Court No. C-78-509
Supreme Court No. 16539

APPEALED FROM:

The Court of the Honorable Christine Durham of the
Third Judicial District Court.

APPEARANCES:

For the Plaintiff- Appellant:

CLIFFORD V. DUNN
Attorney at Law
4525 South 2300 East Suite 103
Salt Lake City, Utah 84117

For the Defendant - Respondent:

GIFFORD W. PRICE
Callister, Greene & Nebeker
800 Kennecott Building
Salt Lake City, Utah, 84133

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Clerk, Supreme Court, Utah

I - INTRODUCTION

A - STATEMENT OF THE CASE

This case is an action by Plaintiff-Appellant to recover funds from a savings account, rightfully owned by Plaintiff-Appellant and located at Zions First National Bank, the Defendant-Respondent.

B - DISPOSITION OF CASE IN THE LOWER COURT

The Honorable Christine Durham, of the Third Judicial District Court, granted Defendant-Respondent's Motion for Summary Judgment, dismissing Plaintiff-Appellant's Complaint.

C - RELIEF SOUGHT

The Plaintiff-Appellant requests that the Supreme Court of the State of Utah reverse the judgment of the lower court in this case and grant Summary Judgment for and in behalf of the Plaintiff-Appellant.

In the Alternative, the Plaintiff-Appellant requests that the Supreme Court of the State of Utah reverse the holding of the lower court in this case and remand this case to the lower court for a full trial on the merits.

D - STATEMENTS OF THE FACTS

Some time in November of 1973, Page 144*, a Mr. David L. Fitzen approached Mr. Ben M. Watnes, of the Transamerica Insurance

*For the sake of brevity, all page numbers included in the Statement of Facts shall refer specifically to the Third Judicial District Court Appeal Record as filed in the Supreme Court of the State of Utah, August 2, 1979, and assigned the Supreme Court Number 16539.

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Company, in order to obtain a bond. The bond which Mr. Fitzen requested was a bond required by the City of Rigby, Idaho so that Mr. Fitzen could perform on a demolition contract with said City.

Mr. Fitzen was told by Mr. Watnes, of Transamerica Company, that in order to obtain the bond, the Transamerica Insurance Company would require full cash collateral. Mr. Fitzen indicated that he had a "line of credit" at the Zions First National Bank, and requested that the "line of credit" be used instead of the cash collateral. Mr. Watnes indicated to Mr. Fitzen that the "line of credit" would not be acceptable in lieu of the cash collateral because a "line of credit" is not irrevocable, Page 150.

On or about January 31, 1974, Mr. Fitzen again approached Mr. Watnes in order to obtain the above-mentioned bond. This time, Mr. Fitzen had in his possession a savings account passbook from Zions First National Bank which showed a balance of Seventeen Thousand Nine Hundred and Thirty Two Dollars (\$17,932.00). Mr. Fitzen indicated he would assign that passbook to Transamerica Insurance to provide the cash collateral for the bond.

On the 31st day of January, 1974, Page 197, David L. Fitzen executed an irrevocable and unconditional assignment of the savings account at Zions First National Bank, numbered 08008148, and at that time did deliver the passbook representing said account to Mr. Watnes, for Transamerica Insurance Company. Also, on the 31st day of January, 1974, Mr. Ben Watnes acknowledged the receipt and acceptance of the assignment of the passbook for Transamerica Insurance Company.

On the 1st day of February, 1974, Mr. Watnes personally

delivered the assignment to Zions First National Bank, together with a letter (said letter may be found at Page 67), containing the following closing sentence: "It is requested that you recognize Transamerica Insurance Company as rightful owner of this passbook until further notice from us."

Pursuant to appropriate pre-trial discovery, Plaintiff-Appellant learned that some time prior to October, 1974, Mr. David L. Fitzen defaulted on an obligation owing to Zions First National Bank. Thereafter, in October of 1974, and without notification to the owner of the passbook being Transamerica Insurance Company, the Defendant-Respondent in this action, debited the savings account and withdrew all of the funds for its own benefit, Page 63.

Some time prior to September 30, 1977, in the course of the normal working procedure of Transamerica Insurance Company, Mr. Ben Watnes contacted Aird Insurance Agency, the Plaintiff-Appellant in this action, to determine whether or not the savings account should be returned to Mr. Fitzen. At that time, the Plaintiff-Appellant in this action indicated that Mr. Fitzen owed the Plaintiff-Appellant money, and requested that Mr. Ben Watnes not deliver the collateral to Mr. Fitzen. Following the conversation with the Plaintiff-Appellant, and on September 30, 1977, Mr. Watnes contacted the Defendant-Respondent in this action to determine the status of the savings account, and to give notice that Transamerica Insurance Company might be withdrawing the funds, Pages 158 thru 161. On October the 4th, 1977, Mr. Ben Watnes was notified by Zions First National Bank that all funds in the savings account had been withdrawn from that savings account "two to three years before", Pages

158 thru 161. Some time following October 4th, 1977, Mr. Watnes communicated that fact to Mr. Aird.

On October the 5th, 1977, Page 76, the Plaintiff-Appellant of this case obtained a judgment against Mr. Fitzen in the Third Judicial District Court for the State of Utah. On or about October 7, 1977, the Plaintiff-Appellant served a Writ of Garnishment on the Defendant-Respondent and upon Transamerica Insurance Company, pursuant to the judgment obtained on the 5th day of October, 1977, Page 76.

Some time thereafter, the bank replied to the Writ of Garnishment indicating that they had a total sum of Forty Nine Dollars and Forty Five Cents (\$49.45) in the account in question. On the 25th day of January, 1978, a Complaint was filed in this action. An assignment from Transamerica Insurance Company to Aird Insurance Company was made on March 13, 1978, whereby Transamerica Insurance Company assigned all of its right, title and interest in and to the savings account in question, to Aird Insurance Agency, Page 204.

A Motion for Summary Judgment was made by the Defendant-Respondent in this action, and after oral argument, was granted on the 23rd day of May, 1979. Prior to this time and throughout pendency of this action before the entry of the judgment, the Plaintiff-Appellant was represented by Mr. Neil R. Sabin, of Stringham and Larson, following the granting of the Summary Judgment, Mr. Sabin withdrew. The counsel, on appeal, Clifford V. Dunn, entered his appearance.

II - ISSUES FOR DETERMINATION BY TRIAL COURT

The sole issue presented to the trial court by this case, is:

Does the Plaintiff-Appellant have a proper and rightful claim to the funds contained in savings account number 08008148 at Zions First National Bank, the Defendant-Respondent. The sum of said funds being \$17,932.00 plus interest.

In order to answer that question, the trial court needed to answer the following:

1. Who is the rightful owner of the savings account in question?
2. Does the Defendant-Respondent have the right to withhold distribution of the funds contained in said savings account?

III - ARGUMENT

A - THE LOWER COURT ERRORED IN GRANTING SUMMARY JUDGMENT FOR AND IN BEHALF OF DEFENDANT-RESPONDENT AND DENYING SUMMARY JUDGMENT FOR AND IN BEHALF OF PLAINTIFF-APPELLANT

(1) The Lower Court Found That The Language Of The Assignment Transferred All Right, Title And Interest To Transamerica.

In the second paragraph of the Memorandum Opinion of the lower court, the lower court uses the following language to describe the language in the assignment: "Notwithstanding the absolute language of the assignment from the principle contractor transferring all right title and interest to Transamerica,...." at Page 103 of the District Court Trial Record. Upon examining the assignment in question, found at Page 6 of the District Court Trial Record, it is obvious that the lower court was correct. The language of the assignment was absolute with no reservations whatsoever. It is further important to note, that a letter accompanying said assignment when it was delivered to and accepted by the bank, found at Page 67 of the District Court Trial

Record, also indicates the absolute nature of the assignment with the following sentence found at the end of said letter: "It is requested that you recognize Transamerica Insurance Company as a rightful owner of this passbook until further notice from us."

(2) The Absolute Assignment Of The Savings Account In Question, Together With The Acceptance Of The Assignment By An Officer Of The Defendant-Respondent, Vested Ownership Together With All Rights Of Ownership In Transamerica Insurance Company.

It is unnecessary to discuss in detail this point. The documents found in the file speak for themselves, and I quote from the assignment in question, found at Page 6 of the District Court Trial Record: "For valuable consideration, receipt whereof is hereby acknowledged the undersigned jointly and severally if there be more than one, does hereby assign, transfer and set over to Transamerica Insurance Company, all right, title and interest in and to all money now on deposit or hereinafter deposited in Zions First National Bank....."

(3) The Lower Court Found That The Savings Account In Question, Together With All Ownership Rights Was Assigned To Plaintiff-Appellant.

In the second paragraph of the lower court's Memorandum Opinion, the court repeatedly referred to the assignment of all the interest held by Transamerica to Plaintiff.

The lower court stated that Transamerica had no real interest in said savings account. We will deal with that issue in detail in another portion of this brief. It is important to note, however, that the ownership interest held by Transamerica according to the documents contained in the Record, establish that Transamerica's ownership in and to the savings account was absolute. Transamerica assigned its absolute interest in the savings account to the Plaintiff-Appellant.

The Plaintiff-Appellant is now the owner of the savings account in question.

(4) Zions First National Bank, The Defendant-Respondent, Cannot Refuse Payment To The Owner Of The Savings Account In Question Unless Said Zions First National Bank Has A Valid Claim Against The Owner Of Said Passbook.

It is well settled that the relationship between a bank and depositor in the bank, is that of a "debtor and creditor".

"It is, therefore, fundamental rule of banking law, that in the case of a general deposit of money in a bank, the moment the money is deposited, it actually becomes the property of the bank, and the bank and the depositor assume their legal relationship of debtor and creditor", Section 339, Banks 10, AM JUR, 2nd.

It is irrelevant in this case that the account in question is not a demand deposit in the form of a checking account, but is a savings account, because the bank in question is a commercial bank with capital stock and stockholders:

"If the deposit is in a savings bank which has a capital stock and stockholders, the relationship is practically the same as that existing between the depositor of a commercial account and the bank which carries the account, nemely that of a debtor and creditor", Section 340, Banks 10, AM JUR 2nd.

It is well settled law that when there exists a valid debt, then the debtor is liable for the payment of that debt unless said debtor can show an offsetting claim against the creditor.

In this case, the creditor is the rightful owner of the savings account, namely the Plaintiff-Appellant. It is obvious that there has been no showing that the Defendant-Respondent in this action has any claim whatsoever against the rightful owner of the savings account.

(5) All Funds Initially Deposited In Said Savings Account Are The Property Of The Rightful Owner Of Said Savings Account.

The initial deposit in said savings account on the 31st day of January, 1974, was \$17,932.00. At that time all funds were in the savings account which was assigned to Transamerica Insurance and following that time to this date there has been no authorization by the rightful owner of the savings account to have those funds removed, nor has there been a valid offset against the rightful owners of the savings account. The above is obvious due to the fact that the evidence shows that the rightful owner of the savings account from the 1st day of February, 1974, until present was first Transamerica Insurance Company and second, the Plaintiff-Appellant in this case, and neither has authorized the Defendant-Respondant to remove funds from said account.

(6) Summary.

Uncontroverted evidence in this case and the findings of the lower court have shown that the Plaintiff-Appellant in this action is the rightful owner of the passbook and savings account in question. It is also obvious that Zions First National Bank has no claim against the owner of the bank account, nor has Zions First National Bank had any claim against the owner of the bank account from the inception of the bank account, namely the 1st day of February, 1974. It is, therefore, the obligation of the Defendant-Respondent, Zions First National Bank (the debtor in this situation), to pay Plaintiff-Appellant all sums in that account, the sum being \$17,932.00 plus interest. It is, therefore, appropriate that a Summary Judgment be granted for the Plaintiff-Appellant ordering the Defendant-Respondent to deliver all sums deposited in said savings account

to the rightful owner of that account, together with all interest accrued thereon.

B - THE LOWER COURT ERRORED BY BASING ITS ORDER OF SUMMARY JUDGMENT FOR AND IN BEHALF OF THE DEFENDANT-RESPONDENT UPON IRRELEVANT AND IMMATERIAL EVIDENCE

(1) The Original Assignment Found At Page 6, In The District Court Trial Record Was Based Upon An Agreement Between David L. Fitzen And Transamerica Insurance Company. Said Agreement In No Way Included The Defendant-Respondent.

There is absolutely no evidence that shows Zions First National Bank was a party to any agreement between David L. Fitzen and Transamerica. Zions First National Bank was merely the depository of funds, that as of the 31st day of January, 1974, were the sole property of Transamerica Insurance Company.

(2) The Lower Court, In Its Memorandum Opinion, Improperly Stated That The Interest Held By Transamerica Insurance Company In The Savings Account Was contingent Upon The Completion Of David L. Fitzen's Contract With Rigby, Idaho.

Plaintiff-Appellant agrees with the lower court that Transamerica's interest in and to the savings account book was a contingent interest. Plaintiff-Appellant, however, disagrees with the lower court, and believes the lower court in error as to what contingencies would terminate Transamerica's interest and to the savings account

It was the lower courts erroneous opinion that the contingencies that would terminate Transamerica's interest in and to the savings account book were those contingencies relating to the proper completion of David L. Fitzen's duties according to contract. That is not true. The contingency that would terminate the interest held by Transamerica Insurance Company in and to the savings account book, was that after all the obligations and responsibilities of David L. Fitzen had been completed, then upon the sole discretion of

Transamerica Insurance Company, Transamerica Insurance Company would release that savings account.

Though all events had taken place, whereby Transamerica Insurance Company could terminate its interest in and to the savings account book, the final contingency which would terminate its interest was never completed by Transamerica. Transamerica never released its interest in and to the savings account in question.

The Defendant-Respondent was totally aware of what was required to terminate Transamerica's interest in the savings account. This is evidenced by the letter found at Page 67 of the District Court Trial Record, and I quote: "It is requested that you recognize Transamerica Insurance Company as the rightful owner of this passbook until further notice from us" (emphasis added). It is clear, therefore, from the absolute nature of the assignment as well as the accompanying letter of instruction, that which would terminate Transamerica's interest in and to the savings account book was a release from Transamerica. It is the position of the Plaintiff-Appellant that such a release never took place. Rather than release its interest, Transamerica has assigned its interest in and to that savings account to another party, Plaintiff-Appellant.

There is a contractual relationship between the Defendant-Respondent and the transferee-in-interest of the savings account. Through the acceptance and acknowledgment of the assignment of the savings account from David L. Fitzen to Transamerica Insurance, the Defendant-Respondent agreed not to relinquish the funds nor take the funds for any other purpose, except for the purposes described to it by Transamerica Insurance, these were the only circumstances whereby that savings account would be released by Transamerica Insurance

Company. Said release was never granted.

(3) Summary.

In view of the above statement, it is clear that the only evidence that the court should hear and the only evidence upon which it should base its judgment is the evidence relating to the agreement between Defendant-Respondent and Transamerica. Any evidence effecting the relationship of David L. Fitzen and Transamerica is irrelevant.

Whether or not David L. Fitzen had completed his work, or whether or not there had been any claims, or whether or not the bond was ever executed upon, pursuant to the agreements of David L. Fitzen and Transamerica Insurance is totally irrelevant to the issue at hand.

The relevant issue at hand, is whether or not Transamerica Insurance Company released its interest in and to the savings account at question, for that is the only part of the agreement between David L. Fitzen and Transamerica Insurance Company that has an impact upon the Defendant-Respondent in this action.

The lower court, instead, based its opinion of the fact that irrelevant contingencies had taken place, but it did not address the issue of whether or not the savings account book had been released.

C - IN THE ALTERNATIVE TO THE ABOVE ARGUMENTS, THE LOWER COURT ERRORED IN GRANTING A SUMMARY JUDGMENT BECAUSE ISSUES OF FACT STILL REMAIN

(1) The Primary Issue Of Fact As Listed In Section II Of This Brief, Is: Does The Plaintiff-Appellant Have A Proper And Rightful Claim To The Funds Contained In The Savings Account Number 0800814 At Zions First National Bank.

1. Was the assignment of the savings passbook and the funds contained in the savings account at Zions First National Bank, absolute and irrevocable?
2. What acts would act as a termination of said assignment?
 - a. Were those acts which would terminate the assignment completed?
3. If the assignment was in fact absolute, and if it was not properly terminated, was the assignment to Plaintiff-Appellant valid?
4. If the assignment to Plaintiff-Appellant was valid, what is Plaintiff-Appellant's ultimate right to the money held in said savings account, and what are the responsibilities of the Defendant-Respondent?

As respecting number 1 above, the lower court correctly determined that said assignment was absolute.

As respecting number 2 above, the lower court state's that the acts which would terminate that assignment, were merely the completion of David L. Fitzen's work. It is, however, the position of the Plaintiff-Appellant that the act which would terminate that assignment is a termination of said assignment by Transamerica Insurance Company. Based upon that position an issue of fact remains; did Transamerica Insurance Company ever in fact release the assignment of the savings account and terminate its interest therein? It is the Plaintiff-Appellants position that the release never took place. It is, however, a fact to be determined at trial as to whether or not that release ever occurred.

It is the understanding of the Plaintiff-Appellant that the response to question 3 above, is that the assignment to Plaintiff-Appellant was valid and was affectuated properly. Therefore, it leaves only question number 4 to be answered.

As respecting question number 4 above, if questions number 1, 2, and 3 are all answered in the affirmative, including the fact

the savings account was not released by Transamerica Insurance, then Plaintiff-Appellant has a right and a claim to all funds deposited therein when the bank account was initially opened together with all interest thereon. If there is any issue to be raised that it is not proper, it is David L. Fitzen's prerogative to raise the issue stating that the Plaintiff-Appellant has no legal justifiable right to those total sums. That issue is not to be raised, however, by the Defendant-Respondent, for that is an issue between David Fitzen and the Plaintiff-Appellant.

D - THE LOWER COURT ERRORED IN AWARDING A JUDGMENT AGAINST PLAINTIFF-APPELLANT FOR COSTS AND DISBURSEMENTS IN OBTAINING DEPOSITIONS OF BEN WATNES AND JOHN NELSON

(1) The Defendant-Respondent In This Action Was Awarded Judgment By The Lower Court For The Costs And Disbursements Expended By The Defendant-Respondent In Obtaining Depositions From Certain Witnesses; The Total Sum Of The Judgment Was \$195.40.

It is the position of the Plaintiff-Appellant that said order is not justified in this action, based upon the assertions as contained in this brief.

D - CONCLUSION

(1) The Plaintiff-Appellant Asserts That The Lower Court Errored In Finding For the Defendant-Respondent.

The lower court should have found for the Plaintiff-Appellant based upon the following facts:

1. There was an absolute and irrevocable assignment of the savings account in question to Transamerica Insurance Company.
2. The only contingency that would act as a release of said savings account was an effective release from Transamerica Insurance Company, not the completion of David L. Fitzen's part of the agreement between David L. Fitzen and Transamerica Insurance Company.

3. Such a release never occurred.
4. The absolute right to the savings passbook now vests in the Plaintiff-Appellant in this action pursuant to a valid assignment.
5. That the Plaintiff-Appellant has the right to the funds that were originally deposited in the savings account, because the withdrawal of said funds was made by the Defendant-Respondent without authority.
6. That Defendant-Respondent should be ordered to pay all said sums originally deposited with Defendant-Respondent together with interest thereon, to the Plaintiff-Appellant as the rightful owner of the savings account.

Should the Court fail to agree with the assertions of the Plaintiff-Appellant as outlined above, and in the alternative, it is the position of the Plaintiff-Appellant that numerous facts at issue need to be determined, such as:

1. Was there an effective release by Transamerica of the savings account, and
2. If there was not an effective release, what is the position of the Plaintiff-Appellant, and what offsets does the Defendant-Respondent have against the position of Plaintiff-Appellant.

It is further the position of Plaintiff-Appellant that based upon the brief and the facts as contained herein that the order of the lower court awarding costs on necessary disbursements for the obtaining of depositions of witnesses be reversed and that the Defendant-Respondent take nothing according to that order.

Dated: October 2, 1979 Respectfully Submitted: