1980

Heglar Ranch, Inc. v. Leonard M. Stillman and Juanita P. Stillman : Brief of Appellant

Utah Supreme Court

Lee W. Hobbs; Attorney for Respondent;Robert R. Brown; Attorney for Appellants

IN THE SUPREME COURT OF THE STATE OF UTAH

HEGLAR RANCH, INC. an Idaho Corporation,	:	
Plaintiff and Respondent,	:	
vs.	:	Case No. 16830
LEONARD M. STILLMAN and JUANITA P. STILLMAN, husband and wife,	:	
Defendants and Appellants	:	

BRIEF OF APPELLANT

Appeal from Judgments of the Third Judicial District Court for Salt Lake County, Honorable Homer F. Wilkinson, Judge

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CASES CITED

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NATURE OF THE CASE

The Plaintiff sued the Defendants for non-payment of a promissory note. Defendants pled the defenses of estoppel and duress as well as other affirmative defenses. At a motion for summary judgment instituted by the Plaintiff, the Plaintiff and Defendants presented affidavits which were conflicting.

DISPOSITION IN THE LOWER COURT

Based upon the affidavits of the parties the lower court granted summary judgment to the Plaintiff in the sum of $25,000 plus costs and fees.

RELIEF SOUGHT ON APPEAL

Defendants, who appeal from the judgment of the lower court, seek the reversal of the judgment entered by the lower court and dismissal of the action against the Defendants. In the alternative, the Defendants seek remand to the District Court for an evidentiary hearing.

STATEMENT OF FACTS

During June of 1978 the Defendants entered into renegotiations with the Plaintiff for the purchase of certain real estate situated in Salt Lake County. The Defendants were to purchase the property from the Plaintiffs who were to exchange the property with another party as part of a tax free exchange. Defendants told the Plaintiff that the Defendants needed to deliver the contract papers to an escrow at the Bank prior to June 24, 1978 in order to get funds for the purchase of the Plaintiff's property together with other property.

During the very last part of the negotiations, about June 21, 1978, George Larsen, attorney for the Plaintiff, told the Defendants that he would not release any documents to the Defendants unless they executed a promissory note in the sum of $25,000 in favor of the Plaintiff. The Defendants, on the evening of June 22, 1978, contacted Max Gillette, the president of the Plaintiff corporation. Mr. Gillette indicated to the Defendants that he knew nothing of the demand by Mr. George Larsen for a promissory note and had not authorized Mr. Larsen to make any such demand. Mr. Gillette told the Defendants that

he would contact Mr. Larsen and would personally recontract with the Defendants prior to the next afternoon when he knew the Defendants must deposit papers with the escrow at the Bank.

Mr. Gillette failed to contact the Defendants as he had agreed. The Defendants made attempts to contact Mr. Gillette throughout the day of the 23rd but were told that Mr. Gillette was unavailable as he had left for Salt Lake City, Utah. Defendants waited all day for Mr. Gillette to contact them. Late in the day, after normal banking hours, and after protesting that they be required to execute any promissory note, the Defendants were contacted by their bank and told that the bank would not stay open for them any longer and if they desired to place any more papers in escrow that the Defendants must bring the papers to the bank immediately.

The Defendants feared losing monies for the purchase of the other properties as well as the Plaintiff's since the property was part of a package, and therefore finally executed the promissory note so they could secure the contract papers from Mr. Larsen and deliver them to the bank. Plaintiff's affidavits do not contradict these assertions. For some reason, which the Defendants do not understand, the monies were not delivered to the bank and payment was not made to the Plaintiff, whereupon Plaintiff brought suit upon the promissory note.

ARGUMENT

POINT I

THE PLAINTIFF SHOULD ESTOPPED FROM ENFORCING THE TERMS OF THE PROMISSORY NOTE SINCE THE DEFENDANTS EXECUTED THE NOTE UNDER DURESS.

As detailed in the Statement of Facts above, the Defendant executed the promissory note only after and when they feared that any further delays would result in a loss to them of other property as well as the Plaintiffs. [They waited as long as they possibly could for Mr. Gillette to contact them (as he had promised to do).]

West's Eighth Dicenial Digest of cases recognizes in its index the concept of economic duress. The Defense cites the court to the particular case of Fox v. Piercey, 119 Utah 367, 227 P 2d. 763 (Utah, 1951). This court adopted the modern law regarding duress, stated by the court as follows:

> "4...any wrongful act or threat which actually put the victim in such fear as to compel him to act against his will constitutes duress."

The court also followed the Restatement of Contracts, Section 4 (g) which indicates that the acts causing duress must at least be wrongful in the moral sense. The acts of Max Gillette, president of the Plaintiff corporation, in not contacting the Defendants as promised and the acts of the Plaintiff's attorney, George Larsen, in requiring the Defendants to execute a promiss note when not authorized to do so, if not in violation of contractual duty, were a least morally wrong.

In Hyde v. Lewis, 323 NE 2d 533, Ill. App. 1975, found

that a defendant did not act under duress where he had ample time for inquiry and where the Plaintiff was not the cause of the necessity which compelled the Defendants to act. In the present case, although the Plaintiff did not place the time requirements on the Defendant, the Plaintiff agents were aware of them. Further, the Plaintiff, by its agent's actions, precluded the Defendants from having ample time to make inquiry by imposing unauthorized restrictions and not making contact with the Defendants as promised.

POINT II

IT WAS IMPROPER FOR THE DISTRICT COURT TO GRANT SUMMARY JUDGMENT IN FAVOR OF THE PLAINTIFF.

It is well settled that summary judgment should be granted only when the court finds that there is no issue of fact involved. This position is supported by the cases annotated under Rule 56 of the Utah Rules of Civil Procedure, Utah Code Annotated, Utan 1954, Amended. (See particularly the cases of Disabled American Veterans v. Hendrixson 9 U. (2d) 152 and Holbrook Co. v. Adams 542 P. 2d 191.)

The affidavits of the Defendants establish facts, not controverted by the Plaintiff, which show improper conduct on the part of the Plaintiff's agents. The trial court erred in granting judgment for the Plaintiff since the court either applied the wrong rule of law or granted judgment to the Plaintiff based on controverted facts. The facts introducted by the Defendants are sufficient to establish duress; it was therefore

improper for the court to grant summary judgment to the Plaintiff since the Defendants had a valid defense.

CONCLUSION

As a result of the errors committed below, Defendants respectfully submit that they are entitled to the following relief:

1. The complaint of the Plaintiff be dismissed with prejudice since the Defendants executed the promissory note under duress.

2. In the alternative, if the Court finds that the record herein lacks facts essential to the disposition of the case, that the case be remanded to District Court for an evidentiary hearing.

Respectfully submitted,

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CERTIFICATE OF MAILING

I hereby certify that I mailed two (2) true and correct copies of the foregoing Brief of Appellant to:

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this 3rd day of March, 1980.

Robert R. Brown