

1980

Palmer L. Clarkson, Et. Al., Western Heritage, Inc.;
Larry J. Sorensen and Jean Sorensen; Cline G.
Campbell, and Jane Doe Campbell, His Wife; C.
Glenn Robertson and Patricia Robertson : Brief of
Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE
STATE OF UTAH

PALMER L. CLARKSON, et al.,)
)
Plaintiffs and Respondents,)

vs.)

Civil No. 16917

WESTERN HERITAGE, INC.; LARRY)
J. SORENSEN and JEAN SORENSEN;)
CLINE G. CAMPBELL, and JANE DOE)
CAMPBELL, his wife; C. GLENN)
ROBERTSON and PATRICIA)
ROBERTSON,)

Defendants and Appellants.)

BRIEF OF RESPONDENT

APPEAL TAKEN FROM THE THIRD JUDICIAL DISTRICT IN AND FOR THE
COUNTY OF SALT LAKE, JUDGE BRYANT H. CROFT

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Defendants and Appellants.)	

BRIEF OF RESPONDENT

STATEMENT OF THE NATURE OF THE CASE

This is an action by plaintiffs/respondents to recover on a foreign judgment.

DISPOSITION IN LOWER COURT

Plaintiffs/respondents made Motion for Summary Judgment before the honorable Bryant H. Croft, in the Third Judicial District, in and for Salt Lake County, State of Utah. The Court found that the foreign court had jurisdiction and granted plaintiffs/respondents' Motion for Summary Judgement.

RELIEF SOUGHT ON APPEAL

Plaintiffs/respondents seek affirmance of the trial

court's decision granting Summary Judgment in their favor.

STATEMENT OF THE FACTS

Since appellants' description of the facts contain irrelevant matters and is incomplete, respondents hereby present the following facts.

On or about the 20th day of July, 1979, respondents filed a complaint against appellants, basing their cause of action upon two foreign judgments, copies of which are attached to said complaint and marked as Exhibits A and B. (R. 2-11) In appellants' answer to the complaint, appellants admit that respondents filed a complaint in Arizona and issued a Summons, "which Summons was duly served upon each of the defendants, pursuant to Arizona law." (R. 22 and 3) Further, appellants admit that they retained Arizona counsel for the purpose of defending said action; that they appeared in said Arizona Court and filed a Motion to Set Aside the Default Judgment; and that they attempted an appeal of said judgment, however, the appeal was not perfected. (R. 23-24)

The Arizona Court found and held that:

Defendants were served with process as required by law; that the default against all defendants was entered herein on October 25, 1978, and thereafter, on or about December 6, 1978, defendants . . . filed a Motion to Set Aside Entry of Default, and a hearing on said Motion took place on March 2, 1979, at which time an Order was entered by this Court denying said Motion The Court proceeded to receive evidence, both oral and documentary, in support of plaintiffs' claims against the defendants, and the Court, deter-

mining that there was no just reason for delay
and expressly directing the entry of Judgement
. . . . (R. 6-7)

There was only one Affidavit submitted at the time of the Summary Judgment herein, which was by respondent Plamer L. Clarkson, Jr., wherein he stated that during the time in question, he was a resident of Scottsdale, Arizona; that he met with the various appellants on numerous occasions in Arizona; that while in Arizona, appellants used his office building, and various charge accounts; and that all of his business dealings with defendants were initiated and transpired in Arizona. (R. 27-28) There was no counter-affidavit submitted by appellants.

Respondents' Motion for Summary Judgment was initially submitted before the Honorable Homer F. Wilkinson, who, after argument, allowed appellants additional time to prepare a memorandum and any affidavits they wished to submit. Thereafter, the matter was heard by the Honorable Bryant H. Croft, who considered all of the evidence presented by the parties, and found that (1) appellants had admitted to proper service of process by the Arizona Court; (2) that the Arizona Court had proper jurisdiction; (3) that the Arizona judgments as filed herein should be given full faith and credit by the Utah Court; and (4) respondents' Motion for Summary Judgment should be granted. (R. 46)

This Appeal followed.

ARGUMENT

I. THE ARIZONA COURT HAD JURISDICTION OVER APPELLANTS AND THE ARIZONA JUDGMENT SHOULD BE GIVEN FULL FAITH AND CREDIT IN UTAH.

Appellants did not raise the issue of jurisdiction in their answer to the complaint, but raised only defenses which went to the merits of the original action in Arizona. In their memorandum against respondents' Motion for Summary Judgment, they argued that they had not had the opportunity to defend against the claim because of the Default Judgment and had therefore been denied due process.

It wasn't until the Appeal that appellants became serious about the jurisdiction question. At the lower court, appellants submitted no affidavits or other evidence concerning jurisdiction or the lack thereof, even though Judge Homer F. Wilkenson, who initially heard the Motion for Summary Judgement, allowed appellants an additional two weeks to submit any evidence they desired. Appellants admitted in their answer that they had been properly served with the summons and complaint in accordance with Arizona law. Further, they attempted to answer the complaint in Arizona and did appear for the purpose of trying to set aside the default judgment.

This court held in Dupler v. Yates, 10 Utah 2d 251, 351 P.2d 624, 636-637 (1960) that if the evidentiary material presented by the moving party is sufficient to support the Motion for Summary Judgement and the opposing party fails to profer any

evidentiary matter when he is presumably in a position to do so, "the courts should be justified in concluding that no genuine issue of fact is present, nor would one be present at the trial." The pleadings are not sufficient to raise an issue of fact in a summary judgment proceeding.

Besides the fact that the record is void of any evidence to support appellants' position, there is otherwise ample evidence and law to support the affirmance of the lower court.

The United States Constitution states in Article IV Section 1, "full faith and credit shall be given in each state to the . . . judicial proceedings of every other state."

This Court has ruled numerous times that the Utah courts are under obligation to give "full faith and credit" to judgments of foreign courts and to regard them as res judicata of the merits of the action. Transamerica Title Ins. Co. v. United Resources, Inc., 24 Utah 2d 346, 471 P.2d 165, 166 (1970) and cases cited therein.

This Court has further stated in Sampsell v. Holt, 155 Utah 73, 202 P.2d 550, 554 (1949):

It is undoubtedly true that the courts of this state have no jurisdiction to alter, amend, or revoke valid judgments and decrees of courts of competent jurisdiction of sister states.

In a case almost identical to the present case, The Fullenwider Company v. Patterson, Utah Supreme Court Case No. 16363, filed April 29, 1980, the defendants were sued as a limited partnership and as individuals in Colorado. After a

default judgment was entered against defendants, they filed a motion to set it aside. The Colorado court held that defendants had been properly served in Utah and that there were no grounds to set aside the default judgment. (Page 2 of the Green Sheets.) The plaintiff then commenced action in Utah against one of the defendants and obtained summary judgment. This Court held on appeal that:

[I]t clearly appears that by seeking affirmative relief in filing his motion to set aside the default judgment in the Colorado court, the defendant . . . entered his appearance and sought an adjudication on the issue as to that court's having acquired jurisdiction over him. The issue as to jurisdiction having thus been raised and resolved by the Colorado court, that ruling is entitled to full faith and credit in our Court, as our district court correctly decided. (page 3 of the Green Sheets)

The Arizona court in the present case made similar findings under almost the identical circumstances as the Fullenwider Company case. When appellants attempted to seek affirmative relief in Arizona, such therefore constituted an appearance, and they thereby subjected themselves to the jurisdiction of the Arizona court, even if there had been no prior jurisdiction.

The appellants claim that in any event, their wives were not involved and the judgment should be reversed as to them. Assuming they were not involved the Arizona court, nevertheless, had jurisdiction over them by reason of Arizona community property law which provides that the spouse of a tortfeasor is liable for any tort committed in the furtherance of community

property or for the purpose of benefitting the community interest. Since the torts of the appellants were committed in Arizona, Arizona law would apply and the wives may be joined as co-defendants with their husbands. Howe v. Haught, 11 Ariz. App. 98, 462 P.2d 395 (1969); Garrett v. Shannon, 13 Ariz. App. 332, 476 P.2d 538 (1970).

II. APPELLANTS RIGHT TO DUE PROCESS HAS NOT BEEN DENIED.

There is no question that the right to defend against a claim is an inherent part of one's right to due process. Nevertheless, there have always been restrictions in the time in which a defendant has to answer a complaint, and for obvious reasons, it is essential to have time limitations.

Appellants are claiming that they have been denied due process because they had been unable to respond to the merits of the original action by reason of the default judgment. If this contention has merit, then no default judgment is final and res judicata. Such would run counter to the entire law relating to default judgments. While it may be true that appellants have an excuse why they failed to answer the complaint, i.e. their attorneys in Arizona failed to file an answer, this is not grounds to disrupt the law. Rather, appellants should seek redress against their attorney in Arizona whose nonfeasance caused the entry of the default judgment.

Appellants have not been denied their right to defend.

They had the same opportunity to file an answer to the complaint as any other person who is lawfully served with a summons and complaint. Appellants position is really that they were unable to respond to the complaint within the required time, and not that they were denied due process.

Counter-balancing policy considerations, such as the desire to have finality to judgments and judicial efficiency, have been the basis for limiting the time in which to answer a complaint. Though the results of these limitations may at times result in laws which appear harsh, they are essential to our judicial system.

In 46 Am. Jur. 2d, Judgments, 654 and 641, respectively, it states:

Judgments rendered by courts of competent jurisdiction are not as a general rule subject to collateral attack on grounds pertaining to the original cause of action. Even the facts that no bona fide debt existed or that the debt or demand was paid or extinguished before the commencement of the action, and that the judgment was entered by default, have been held not to constitute sufficient grounds for a collateral attack upon the judgment. (Emphasis added)

* * *

Indeed, it is immaterial in this respect how irregular the proceedings or how erroneous the judgment may have been.

The citation to the above authorities are not given to imply that the Arizona judgments herein were erroneous or in any way unfounded. On the contrary, respondents believe that said

judgments are fully legitimate and well founded. These authorities, however, emphasizes the fact that a default judgment does not deny due process and that a default judgment should be given the same full faith and credit as any other judgment.

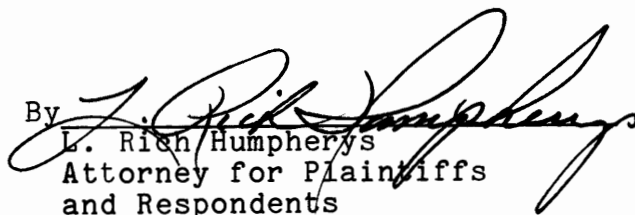
CONCLUSION

Because appellants failed to produce any evidence to support their position at the lower court, together with the fact that the Arizona court did in fact have jurisdiction over appellants, and that appellants right to due process has not been denied, respondents respectfully submit that the trial court's summary judgment should be affirmed.

DATED this 11th day of July, 1980.

CHRISTENSEN, JENSEN, KENNEDY
& POWELL

By


L. Rich Humphreys
Attorney for Plaintiffs
and Respondents

CERTIFICATE OF SERVICE

This is to certify that on the ____ day of July, 1980, a true and correct copy of the foregoing Brief of Respondent was mailed, postage prepaid to:

C. Glenn Robertson
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Steven J. Christiansen