

1980

Western Surety Company v. Clarence H. Redding, Tom G. Redding, and Bert W. Redding, Individually : Brief of Appellants

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

WESTERN SURETY COMPANY, :

Plaintiff and :
Respondent, :

vs. :

CLARENCE H. REDDING, TOM :
G. REDDING, and BERT W. :
REDDING, individually, :

Case No. 16935

Defendants and :
Appellants. :

BRIEF OF APPELLANTS

APPEAL FROM THE JUDGMENT OF THE
DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH
HONORABLE HOMER F. WILKINSON, DISTRICT JUDGE

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FILED

WESTERN SURETY COMPANY, :

Plaintiff and :

Respondent, :

CLARENCE H. REDDING, TOM
G. REDDING, and BERT W.
REDDING, individually,

Defendants and
Appellants.

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REDDING, individually,	:	
	:	
Defendants and	:	
Appellants.	:	

BRIEF OF APPELLANT

NATURE OF THE CASE

Plaintiff-Respondent Western Surety Company (hereinafter "Western Surety") seeks indemnity from Defendants-Appellants Clarence H. Redding, Tom G. Redding and Bert M. Redding (hereinafter "Reddings") for sums paid by it under a Motor Vehicle Dealer's Bond issued to Redding Associates, Inc. on the basis of indemnity agreements contained in Reddings' bond applications.

DISPOSITION IN LOWER COURT

On June 7, 1978, Western Surety filed a Complaint in the Third Judicial District Court for Salt Lake County seeking judgment for \$2,550.00 against Reddings based upon a claim it had paid to another automobile dealer as surety for Redding Associates, Inc. Since the facts were not disputed, and since

determination of the case turned upon interpretation of the provisions of the bond and the Motor Vehicle Dealers' Act, Chapter 3 of Title 41, Utah Code Annotated (1953, as amended), the parties entered into a written stipulation of facts. Cross motions for summary judgment were heard on oral argument on November 23, 1979. There was no transcript of the hearing. The court ultimately entered an Order and Judgment in favor of Western Surety on January 25, 1980.*

RELIEF SOUGHT ON APPEAL

Appellants seek reversal of the lower court's order of January 25, 1980 granting Respondent's Motion for Summary Judgment and denying Appellants' Motion for Summary Judgment. Appellants further seek an order directing summary judgment in their favor as a matter of law.

STATEMENT OF FACTS

Under Utah's Motor Vehicle Dealers' Act, UTAH CODE ANN. § 41-3-16(1) (1953, as amended) all automobile dealers must procure a surety bond as a condition of becoming licensed and doing business. In February, 1976, the Reddings made the appropriate applications, and a bond was issued by Western

*The court had initially entered judgment for Western Surety on November 30, 1979. Reddings subsequently objected to the content of the Judgment because it did not reflect a finding from the bench that they had neither engaged in fraud nor had fraudulent intent in the subject transaction and, further, that judgment was granted in favor of Western Surety solely on the court's finding that Reddings had furnished an automobile purchaser with defective title contrary to the requirement of UTAH CODE ANN. § 41-3-2 (1953) R. 62. The January 25, 1980 amended Order and Judgment incorporated those findings. (R. 64.)

Surety to Redding Associates, Inc., a Utah corporation, on February 17, 1976. Copies of the applications and bond are appended as Exhibits "A" and "B", respectively.

In August, 1976, Redding Associates, Inc., doing business as Redding Auto Sales, purchased a 1972 CJ-5 Jeep bearing Alabama title, paying fair value for the vehicle. Thereafter, Auto Exchange, Inc., another automobile dealer, became interested in buying the jeep from Redding Auto Sales. On August 27, 1976, in contemplation of the purchase, Nick Smith, an employee of Auto Exchange, accompanied Clarence H. Redding to the Utah State Department of Motor Vehicles (DMV) office at 2100 South and State Streets in Salt Lake City. The certificate of title was presented to the clerk at the DMV, who examined it and informed both men that the title was in good order. (R. 34.) On that same day, Auto Exchange purchased the jeep from Redding Auto Sales and received the title.

Auto Exchange then resold the jeep. Subsequent to that sale, it was discovered that the jeep was a stolen vehicle. The jeep, then located in California, was returned to the lienholder of the true owner. (R. 36.)

Auto Exchange thereafter made written demand upon Western Surety to make good its loss under Redding Associates' Motor Vehicle Dealer's Bond. Western Surety, without making any demand upon Reddings, and without contacting or consulting them, paid Auto Exchange's claim for \$2,500.00. On March 8, 1978, Western

Surety made demand upon Reddings to indemnify it, pursuant to the indemnity agreements in Reddings' bond applications, for the \$2,550.00 paid to Auto Exchange. Reddings, believing that the claim was not covered by the surety bond and that they had a meritorious defense to Auto Exchange's claim, refused to indemnify Western Surety. On June 7, 1978, Western Surety filed the action resulting in this appeal.

ISSUES ON APPEAL

1. Whether the lower court erred in finding that the loss arose because Reddings violated UTAH CODE ANN. § 41-3-2 (1953) by giving another automobile dealer defective title to a vehicle when they neither knew that the vehicle was stolen nor that title was defective.

2. Whether the lower court erred by failing to find that Western Surety acted as a volunteer when it paid Auto Exchange, thereby relieving Reddings of any duty to indemnify it.

3. Whether the lower court erred by failing to find that any obligation that may be owing to Western Surety by virtue of its payment to Auto Exchange is the debt of a bona fide corporation, for which Reddings are not individually liable.

ARGUMENT

(Preliminary Statement)

This is not an action in which an injured purchaser seeks damages from a used car dealer from whom he bought a stolen

automobile. The purchaser here, another auto dealer, chose instead to assert its claim directly against Reddings' surety. As a result, this case involves a claim for indemnity arising from the relationship of principal and surety — a relationship mandated by statute for automobile dealers.

UTAH CODE ANN. § 41-3-16 (1953) requires that automobile dealers procure a bond as a condition of doing business. While dealers may be subject to broad liability in their transactions with purchasers, the surety's obligation on the bond is expressly limited by the Code. Stated simply, the question here is whether, on the facts of this case, Western Surety had any obligation under Reddings' bond to pay the claim of Auto Exchange, or whether in so doing it acted as a volunteer.

POINT I

REDDINGS' INNOCENT CONDUCT IN THE
SALE OF THE STOLEN JEEP TO AUTO
EXCHANGE IS NOT WITHIN THE AMBIT
OF WESTERN SURETY'S OBLIGATION
UNDER UTAH CODE ANN. § 41-3-18.

A. Utah law specifically limits the rights of action against a surety for losses sustained in transactions with automobile dealers. The dealer's bond that Reddings obtained from Western Surety was the standard form of bond prescribed by UTAH CODE ANN. § 41-3-16(1) (1953). As mandated by that statute, the bond was "approved as to form by the attorney general of the State of Utah, and conditioned that said applicant

shall conduct his business as a dealer without fraud or fraudulent representation, and without the violation of any of the provisions of this act."

The rights of action available against an automobile dealer's surety on the bond are set forth in UTAH CODE ANN. § 41-3-18, which provides:

If any person shall suffer loss or damage by reason of fraud, fraudulent representation or violation of any of the provisions of this act by a licensed dealer or one of his salesmen . . . , such person shall have a right of action against such dealer, and/or the automobile salesman guilty of the fraud, fraudulent representation or violation of any of the provisions of this act, and/or the sureties upon their respective bonds.

It is clear from the language of § 41-3-18 that the legislature, in conjunction with its regulation of automobile dealers, intended to confer certain rights and remedies upon persons who conduct business with licensed dealers, including a direct right of action upon the dealer's bond. It is equally clear from the language of the statute that the legislature intended to limit the scope of protection under the dealer's bond to situations involving loss resulting from either the dealer's fraud or his violation of the statutory provisions regulating the conduct of his business.*

These limitations on the statutory right of action were recognized by this court in Lawrence v. Ward, 5 U.2d 257, 300

*The statute, of course, does not preclude other causes of action which an injured purchaser could assert against the dealer.

P.2d 619 (1956). After holding that the dealer's bond "was intended to protect all persons doing business with another in his capacity as a licensed motor vehicle dealer," the Court went on to examine the transactions in that case "to determine whether they fall within the purview of U.C.A. 1953, 41-3-18 . . ." for which recovery could be had on the surety bond. 300 P.2d at 622.

In the instant case, the lower court specifically found that Reddings "engaged in no fraud or fraudulent intent in the specific transaction in question." (R. 64.) Therefore, in order to sustain the trial court's judgment, liability must be predicated upon some violation of the act resulting in a loss which Western Surety was obligated under the statute to pay.

B. There is no strict liability under the Motor Vehicle Dealer's Act for innocent delivery of a defective certificate of title. The lower court granted summary judgment for Western Surety based solely on its finding that Reddings "supplied the purchaser of the automobile in question [with] a defective title contrary to the requirement of Utah Code Annotated, Chapter 3 of Title 41 (1953, as amended)." (R. 64-65.) Although the written judgment refers only generally to violation of Chapter 3 of Title 41 (R. 65), Western Surety argued below, and the court ruled from the bench, that the specific provision violated by Reddings was UTAH CODE ANN. § 41-3-2 (1953). That section provides:

Every person, firm, or corporation upon the sale and delivery of any used or secondhand motor vehicle shall within forty-eight hours thereof deliver to the vendee, and endorsed according to law, a certificate of title, issued for said vehicle by the state tax commission.

It was Western Surety's contention that delivery of title under § 41-3-2 "implies that this title should be good and sufficient by law on the vehicle" (R. 50.) In other words, according to Western Surety, delivery of defective title - even innocently - is no delivery at all within the meaning of § 41-3-2.

In determining whether Reddings' delivery of the defective title was a violation of § 41-3-2 and, if so, the type of violation for which a right of action exists against the surety under § 41-3-18, the underlying purpose of Chapter 3 of Title 41 must be considered. The Motor Vehicle Dealer's Act is a regulatory statute designed to govern automobile dealers in the conduct of their business. It provides criminal sanctions for violation of its provisions (§ 41-3-2) and specifies conduct which will be deemed unlawful and a violation of the Act. The language of § 41-3-23, enumerating prohibited acts and omissions, requires that a dealer act "knowingly" or "intentionally" or "unfairly" in many instances. The intent of the legislature in regulating automobile dealers was to protect the public from fraudulent acts and intentional misconduct by sellers of new and used cars.*

★

UTAH CODE ANN. § 41-3-1 (repealed 1967), which dealt with used cars brought into the state for resale, required that the dealer's bond cover losses occasioned by simple failure of title as well as fraud and breach of warranty. That provision was repealed in 1967.

The lower court apparently concluded that even innocent delivery of defective title violated § 41-3-2, requiring 48-hour delivery of the certificate, and that such violation conferred a right of action against Reddings' surety on the bond. Such interpretation not only fails to consider the goal of the act to prevent fraud and intentional misconduct by dealers, but also fails to account for the only provision of Chapter 3, Title 41 dealing with stolen vehicles. Under § 41-3-23(3), it is a violation of the act for a dealer

[t]o knowingly purchase, sell, transport, dismantle or otherwise acquire, dispose of or handle a stolen vehicle. [Emphasis added.]

It is uncontroverted that Reddings had no knowledge at the time of the transaction that the jeep had been stolen. Without the requisite scienter, there could be no violation of § 41-3-23(3). To maintain that innocent handling of a stolen vehicle does not violate the act and does not confer a right of action under § 41-3-18, but that innocent transfer of the certificate of title in the same transaction does violate the act and does confer such a right of action places an inharmonious and irreconcilable construction on the two provisions. In view of the express requirement that handling a stolen vehicle be "knowing" to constitute a violation, there can be no strict liability where the dealer has made a good faith effort to comply with § 41-3-2 by delivering a title valid on its face and found to be in good order by the Department of Motor Vehicles. A finding of liability in this case would be equivalent to holding that a dealer and his surety are title insurers of automobiles, regardless of their knowledge on the conduct of the buyer.

C. Even if Reddings' delivery of the defective title was a violation of the act, Auto Exchange was precluded by its own conduct from maintaining an action under UTAH CODE ANN. § 41-3-18.

The right of action against a dealer or his surety provided by §41-3-18 is available only where the loss or damage is suffered by reason of the dealer's fraud or violation of the act. It is apparent from the facts of the subject transaction that the loss incurred by Auto Exchange resulted from its own conduct in accepting the certificate of title, and not as a result of any violation of § 41-3-2 that Reddings may innocently have committed.

The facts show that an employee of Auto Exchange went to the Department of Motor Vehicles with Clarence Redding to ascertain the validity of the Alabama title. The clerk's representation that the title was in good order was made to both men. Based upon that representation, the sale of the jeep and delivery of the title to Auto Exchange was consummated on the same day. Both dealers had access to the same information and chose to conduct their transaction in reliance thereon. The loss which Auto Exchange later sustained was incurred through its own conduct; if there was any violation of the act by Reddings, Auto Exchange acquiesced in that violation and waived its right to claim damages as a result thereof. In Lawrence v. Ward, 5 Utah 2d 257, 300 P.2d 619 (1956), this Court was presented

with a claim against a dealer's surety bond predicated upon violation of § 41-3-2 for failure of the dealer to deliver the certificate of title to the purchaser within forty-eight hours. The claimant bank had issued a check in the names of the dealer and the purchaser of an automobile in exchange for the purchaser's promissory note. It thereafter cashed the check bearing only the dealer's endorsement. When the dealer subsequently could not deliver the certificate of title, the purchaser refused to endorse the check, which had already been paid to the dealer. In rejecting the bank's claim for damages notwithstanding the dealer's complete failure to deliver the title, this Court said:

It was obvious to the bank that the check was not properly endorsed and it had no right to rely on the expectation that the signature of the co-payee could be obtained at a later date. The loss of the bank occurred by reason of its own negligence and prior to the time when it was discovered that United Auto Sales could not deliver title, and it cannot now obtain judgment against the bond.

300 P.2d at 622-623 (Emphasis added.)

The same reasoning is equally applicable in this case. Auto Exchange could not have obtained a judgment against Reddings' surety bond since the loss occurred by reason of its own conduct and not in reliance upon the acts of Reddings.

POINT II

WESTERN SURETY ACTED AS A
VOLUNTEER WHEN IT HONORED THE
CLAIM OF AUTO EXCHANGE; IN SO DOING,
IT RELIEVED REDDINGS OF ANY
DUTY TO INDEMNIFY IT.

The applications for Redding Associates' surety bond provide that in consideration of Western's issuing the bond, the applicants "agree to indemnify . . . the said Company from and against any liability, and for all lost, cost, charges, suits, damages, counsel fees and expenses of whatever kind or nature which said company shall at any time sustain or incur, for or by reason, or in consequence of said company having become surety" (Emphasis added.)

It is hornbook law that "[i]ndemnity against losses does not cover losses for which the indemnitee is not liable to a third person, and which he improperly pays." 41 Am. Jur. 2d, Indemnity §33. Western Surety voluntarily settled Auto Exchange's claim without making any demand upon Reddings and without contacting or consulting them. In so doing it covered a loss which was not within the scope of either party's obligations under UTAH CODE ANN. § 41-3-18 (1953). In Carson v. Geis Irrigation Co. of Kansas, Inc., 211 Kan. 406, 507 P.2d 295, (1973), the court said:

While the fact of voluntary payment does not negative the right to indemnity; legal liability, i.e., proof by a preponderance of the evidence of the obligation to plaintiff or a third

party that cannot be legally resisted is a fundamental prerequisite to recovery by an indemnitee who has made a voluntary payment. [Citations omitted.]

Id. at 300.

Western Surety either failed to properly investigate the facts of the transaction or to understand the legal ramifications. In either event, by paying a claim which did not arise through either Reddings' fraud or violation of the Motor Vehicle Dealer's Act, it foreclosed defenses that could have been asserted against Auto Exchange. Because Western Surety acted as a volunteer on an obligation it legally could have resisted, it has no right to indemnity from Reddings on the claim.

POINT III

ANY OBLIGATION THAT MAY BE OWING
TO WESTERN SURETY BY VIRTUE OF ITS
PAYMENT TO AUTO EXCHANGE IS
THE DEBT OF A BONA FIDE CORPORATION,
FOR WHICH REDDINGS ARE NOT LIABLE.

In their Answer to Western Surety's Complaint, Reddings denied that they had applied for the bond in their individual capacities or that they had any obligation to indemnify Western Surety thereunder. At oral argument on the motions for summary judgment, counsel for the Reddings argued that any obligation owing to Western Surety in this matter was the corporate debt of Redding Associates, Inc. and not that of the individual defendants. However, the issue was not addressed by the lower court in its ruling.

Western Surety at all times was aware that it was dealing with a corporate entity and not with the Reddings as individuals. On each application for the surety bond, the box marked "Corporation" was checked. In the space for the name of the obligee each application was marked "dba Redding Auto Sales, Inc." Although the applications were executed by the Reddings without reference to their corporate capacity, there is no indication that the Reddings, in signing on behalf of the corporate applicant, intended to become personal guarantors of the corporation's indemnity agreement. And where there is doubt or uncertainty as to the intent of an indemnity agreement, it is the policy of this Court to construe the contract strictly against the party preparing it. Union Pac. R.R. Co. v. El Paso Natural Gas Co., 17 Utah 2d 255, 408 P.2d 910, 914 (1965). Accord, Howe Rents Corp. v. Worthen, 18 Utah 2d 263, 420 P.2d 848 (1966). The applications and bond were standard Western Surety forms.

The bond was applied for and issued on behalf of the corporation. It is clear that the Reddings as individuals cannot possibly be held liable for any obligation arising in connection with the corporation's surety bond.

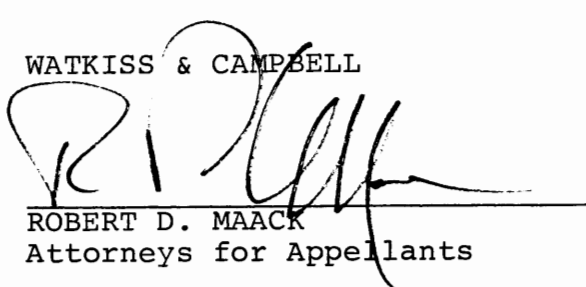
CONCLUSION

For the foregoing reasons, and based upon the authorities cited herein, Appellants respectfully pray that the lower court's order granting summary judgment in favor of Western Surety be

reversed, and that this Court direct that summary judgment be entered in their favor.

Respectfully submitted this 4th day of June, 1980.

WATKISS & CAMPBELL



ROBERT D. MAACK
Attorneys for Appellants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Brief of Appellants was HAND DELIVERED to David H. Epperson of Hanson, Russon, Hanson & Dunn, Attorneys for Respondent, 702 Kearns Building, Salt Lake City, Utah 84101 this 4th day of June, 1980.



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APPLICATION FOR BOND

IMPORT

Attach explanation

if you feel Surety should not
COMPLETE SECTION 10 ON BAL

No.
Proprietor _____ 1
Co-proprietor _____ 1
Reference, Partner, Agent _____ 2
Credit _____ 3
License _____ 4
Other Information _____ 5
Place of Business _____ 5
Contract _____ 7
Last Surety _____ 8
Fidelity _____ 9
Agent's Recommendation _____ 10

Name of Applicant Clarence H. Reed
(For co-partnership, give full names of partners)

Address 1029 Capistrano Drive
(Street and Number)

Amount of Bond \$ 5,000⁰⁰ Effective Date 2-6