

1982

General Motors Acceptance Corp. v. Hector Martinez et al : Brief of Plaintiff-Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE
STATE OF UTAH

GENERAL MOTORS ACCEPTANCE :
CORPORATION, a New York :
Corporation, :
Plaintiff-Respondent, :
vs. :
HECTOR MARTINEZ and MANUEL M. :
RIVERA, :
Defendants-Appellants, : Case No. 18072
vs. :
GREAT EQUITY LIFE INSURANCE :
COMPANY OF CHICAGO, ILLINOIS; :
STREATOR CHEVROLET COMPANY, :
INC.: AL BARRUTIA; BRENT H. :
JENSEN; and E.C. ROSEBOROUGH, :
Third-Party Defendants- :
Respondents. :

BRIEF OF PLAINTIFF-RESPONDENT
GENERAL MOTORS ACCEPTANCE CORPORATION

Appeal from Judgment of the District Court of Salt Lake County
State of Utah, Honorable Dean E. Condor, Judge

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FILED

FEB 24 1982

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Third-Party Defendants- :
Respondents. :

BRIEF OF PLAINTIFF-RESPONDENT
GENERAL MOTORS ACCEPTANCE CORPORATION

NATURE OF THE CASE

Plaintiff, General Motors Acceptance Corporation,
(hereinafter "GMAC") commenced an action in replevin against
Defendants, Hector Martinez and Manuel Rivera after default in
payments under a conditional sale contract. Defendants brought
action against Third-Party Defendant Great Equity Life Insurance

Company (hereinafter "Great Equity") to compel the insurance carrier to make the payments under a disability policy purchased by Defendant, Hector Martinez. Great Equity denied the claim due to a preexisting condition and corresponding exclusion in the policy.

DISPOSITION IN LOWER COURT

At the conclusion of all the evidence, the Court granted a directed verdict in favor of GMAC and thereafter, allowed attorney's fees of \$2,500.00.

RELIEF SOUGHT ON APPEAL

Respondent, GMAC, seeks an affirmation of the verdict and of the award of attorney's fees.

STATEMENT OF FACTS

On September 12, 1978, Hector Martinez and Manuel M. Rivera, Defendants and Appellants contracted with Streator Chevrolet Company Incorporated to purchase a 1977 Chevrolet Malibu. See Plaintiff's Exhibit "1". At the time of executing the conditional sale contract, Hector Martinez also arranged purchase of a policy of life and disability insurance through Great Equity Life Insurance Company of Chicago to pay off the balance of the contract in the event of his subsequent death or disability. See Defendant's Exhibit "17", R-480. The sales contract was then assigned by Streator to Plaintiff-Respondent, General Motors Acceptance Corporation for financing of the vehicle and insurance premiums. R-358, 368.

Subsequent to the purchase of the vehicle, the Defendant, Hector Martinez, made two payments on the contract, and thereafter, according to the evidence, became disabled as a consequence of a kidney failure. (R. 456). Hector Martinez then made application through Streater Chevrolet and the insurance carrier to make the payments because of a suffered disability. Upon receipt of the notice of the claimed disability, GMAC deferred collection efforts on its contract while the insurance carrier, Great Equity Life, conducted an investigation to determine whether the disability was within the terms of the policy. (R. 379).

In July, 1979, GMAC was advised by Great Equity that it was denying coverage to Mr. Martinez. See Defendant's Exhibit "23". GMAC then notified Mr. Martinez of the denial and sought payment from Defendants under the contract. See Defendant's Exhibit "15". Upon failure of the payments, GMAC sought to recover possession of its collateral.

GMAC attempted, on two occasions, to obtain summary judgment to allow it recover the vehicle but the same was refused forcing GMAC to go to trial. (R. 68,69; R. 139, 140). At the conclusion of all the evidence and prior to submission of the matter to the jury, Judge Dean Condor ruled in favor of General Motors Acceptance Corporation, granting it judgment and allowed the issues between Hector Martinez and Great Equity Life to go to the jury. (R. 525; R. 532).

Because counsel for appellants persists in trying to suggest that GMAC somehow has ties to Streator and Great Equity that make GMAC responsible for the nonpayment of the insurance carrier, counsel has felt obliged to set forth the policies and procedures of GMAC generally and as applied to this contract and as supported by the testimony of Plaintiff's agent, Morris Keetch, who testified at trial, without contravention. These policies are reviewed with Plaintiff's agent, Morris Keetch, at pages 354 through 380 of the Record.

Plaintiff, General Motors Acceptance Corporation, as applied to this case, is in the business of purchasing retail installment sale contracts from automobile dealers upon sales of motor vehicles to customers. Although GMAC negotiates arrangements with automobile dealers for acquiring retail installment sale contracts, no dealer is under any obligation to utilize the services of GMAC. Likewise, GMAC will provide forms and advertising literature to the dealer but such forms need not be used by the dealer except when the dealer intends to use GMAC for financing.

No dealer, doing business with GMAC, nor any customer of any dealer is under any obligation to submit any contract to GMAC and the dealer and customer are at liberty to work out any financing arrangements agreeable between them. The customer is entitled to utilize a bank or any other financing institution and the dealer is authorized to recommend or use any source of

financing, including the carrying of the contract on his own, if desired.

GMAC does not require as a prerequisite to accepting a contract for financing that a customer arrange for credit life or disability insurance. Such arrangement is strictly optional with the customer. Also, GMAC does not select the insurance carrier for the customer, if insurance is selected, nor does it obtain any compensation from the premiums paid, except incidentally by interest charges upon the amount of premium which may be financed under the contract. The financing institution, in this case GMAC, would be named the beneficiary under the contract in the event the life or disability portion of the contract should be called into effect. GMAC would then be paid its monthly payments during the period of disability, or in the event of loss of life, the balance on the contract.

Upon receipt of a contract by a dealer for acceptance by GMAC, Plaintiff, in its course of business, checks the same for sufficiency of information, accuracy of computation, and compliance with local law. At the presentation of the contract to GMAC, GMAC reserves the right to accept or reject the same and has no obligation to assume the contract forwarded by the dealer.

At no time does GMAC become involved in the negotiations of the price or other arrangements on the contract nor does it dictate the terms thereof to the dealer or customer. The dealer

and customer are left free to arrange price and other benefits under the contract. GMAC has neither personal contact with the customer nor an opportunity to communicate with the customer and must necessarily rely upon the information forwarded at the time of the proposed assignment of the contract by the automobile dealer. Specifically, in the instant case, GMAC did not deal with the Defendants, either personally, directly, or indirectly.

When Defendants arranged for the purchase of the automobile in question, a 1977 Chevrolet Malibu Classic, their dealings were strictly with Streater Chevrolet. (R. 476-480). The election of Defendant Hector Martinez to acquire a disability insurance contract, was a determination which he was entirely free to accept or reject. (R. 367, 368).

Upon receipt of the contract, GMAC approved the same for financing and forwarded the requisite balance to the dealer including funds to finance the insurance premium for disability insurance. However, GMAC is in no way affiliated with Great Equity Life. (R. 357). This matter was left between the selling dealer and the customer.

At the conclusion of Plaintiff's case, Plaintiff's counsel requested leave of Court to give evidence relative to attorneys fees following a final decision of the merits by the Court or jury, it being the position of counsel for Plaintiff that the attorneys fees were a matter to be determined by the Court and

not the jury. (R. 336; 344). Counsel for Defendants objected thereto. (R. 342).

After the decision of the jury, Counsel for Plaintiff made a motion for entry of judgment and for a determination of attorneys fees. (R. 336). This matter was scheduled for hearing but was continued at the request of Counsel for Defendants to the 2nd of December, 1981. (R. 338). On December 2nd, Counsel for Plaintiff appeared at the hearing, after having previously submitted an affidavit for attorneys fees and was prepared, if necessary, to give testimony at that time. Counsel for Defendants did not appear at the hearing and after reviewing the matter, Judge Condor executed judgment in favor of the Plaintiff and, based on the affidavit supplied, (R. 340) awarded an attorneys fee of \$2,500.00. (R. 539, 540).

The only issues raised by Defendants which appear to challenge the judgment rendered in favor of GMAC are parts four and six of Defendants' Brief. Therefore, Plaintiff responds only to these issues, and to the facts as construed by Defendants' Counsel.

ARGUMENT

POINT I

WHETHER A PURCHASER OF A MOTOR VEHICLE UNDER A CONDITIONAL SALE CONTRACT, WHICH PROVIDES FOR THE FINANCING OF A PREMIUM OF A DISABILITY INSURANCE POLICY BY THE FINANCING INSTITUTION IS ENTITLED TO WITHHOLD PAYMENTS ON THE CONTRACT TO THE FINANCING INSTITUTION WHEN THE DISABILITY CARRIER DISPUTES THE RIGHT OF THE DISABLED PURCHASER TO CLAIM THE BENEFITS OF THE POLICY.

Counsel for Defendants suggests that GMAC, by virtue of its accepting the contract of sale between Defendants and Streator Chevrolet for financing, caused GMAC to stand in the shoes of Great Equity Life. Therefore, it is alleged that GMAC was obligated to be paid by Great Equity Life or forfeit payments due under the contract. This theory of Counsel for Defendants is apparently predicated upon the fact that GMAC stood to benefit both under the sales contract and under the policy issued by Great Equity Life. However, no authority to support such a proposition is cited by Counsel.

It is clear from the evidence and as found by the lower Court, that GMAC received by assignment a conditional sale contract from Streator Chevrolet, which it accepted for financing. (R. 524). Also it is undisputed that at the receipt of the contract by GMAC the contract, on its face, indicated that Defendant Hector Martinez requested disability insurance and that the same was to be financed out of the proceeds to be paid by GMAC to Streator Chevrolet. See Plaintiff's Exhibit "1"; (R. 369). Also, the contract is specifically clear that Defendants, not Great Equity Life, were to pay the contract.

The evidence did adduce that the purpose of the disability policy was to pay the obligation of Defendant, if Hector Martinez became disabled within the stipulated provisions of the insurance contract, and that Great Equity Life recognized the obligation to pay GMAC, the creditor. See Defendant's Exhibit

"22". However, this was not a part of the sales contract.

Under the law of this state and established rules of contract, all provisions of an agreement should be considered and given effect [Minshev v. Chevron Oil Company, 575 P.2d 192 (Utah 1978)], and when the language is clear, it must be enforced according to its terms. Wingets v. Bitters, 28 Utah 2d 231, 500 P. 2d 1007 (1972). A court will not rewrite the terms of an unambiguous contract [Provo City Corp. v. Nielson Scott Company, Inc., 603 P.2d 803 (Utah 1979)], and a contract does not become ambiguous (so as to cause a court to rewrite it) by the fact that the parties may urge diverse interpretations. Jones v. Hinkle, 611 P.2d 733, 735 (Utah 1980). Also, when the terms of a contract are clear and unambiguous, the contract is conclusive. Rushing v. Lovelace-Bataan Health Program, 598 P.2d 211 (New Mex. 1979).

As concerns a question of rights of a party, not a party to a contract, but for whose benefit the contract was made, it is well settled, that the rights of the third person to sue under the contract are dependent upon the terms of the agreement and are no greater than those of the promisee. Continental Bank and Trust Company v. Stewart, 4 Utah 2d 228, 291 P. 2d 890, 894 (1955).

A reading of the contract of sale in the instant case clearly establishes the obligation of Defendants to pay on the contract. Nowhere does the agreement specify the right of the

Defendant to withhold payment if the buyer became disabled or, upon becoming disabled, if the insurance carrier refused to pay. Further, the contract does not give the right to the buyer to withhold payment if he disagrees with the refusal of the insurance carrier to pay under its contract.

The contract of insurance was between Hector Martinez and Great Equity Life Insurance Company. GMAC, although a beneficiary, was not a party to the contract. Consequently, when a dispute arose as to whether Hector Martinez was within the coverage provisions of the policy, that dispute was for him to resolve, and if possible, to force the insurance carrier to perform its contract. The fact GMAC may have had an interest and claim as a third party beneficiary did not suddenly terminate the sales agreement. The rights of GMAC as a third party beneficiary would be no greater than those of Hector Martinez. Continental Bank & Trust Co. v. Stewart, supra. However, even assuming the right of GMAC to sue Great Equity Life as a third party beneficiary, GMAC could do nothing more than seek to compel Great Equity Life to pay the payments; however, it was not obligated to do so.

To suggest that GMAC, by financing the premium for a disability policy on behalf of Hector Martinez, forfeited its rights to look to the Defendant for payment while Hector Martinez pursued his claim against Great Equity Life, would require a rewriting of a clear and unequivocal contract, which

the courts will not do. Provo City Corp. v. Nielson Scott Company, Inc., supra. To uphold the position sought by Defendants would afford every person who causes injury to another for which he carries insurance, to prevent judgment being entered against himself merely because a dispute arises between himself and his insurance carrier as to whether the incident was covered under the policy.

The proper remedy for Defendants would have been to make the payments under the agreement with GMAC and prosecute against Great Equity Life to recover such sums as Defendants could establish the carrier was liable to pay. See Scott v. Metropolitan Life, 398 P.2d 822 (Okl. 1964).

By failing to perform under the sales contract, Defendants breached the agreement entitling Plaintiff to judgment. The lower Court properly granted judgment in favor of the Plaintiff and the decision of the lower Court should be upheld.

POINT II

WHETHER A PARTY TO A CONTRACT AUTHORIZING RECOVERY OF ATTORNEYS FEES WAIVES THE RIGHT TO OBTAIN SUCH FEES BY FAILING TO PRESENT EVIDENCE THEREOF BEFORE THE JURY BUT THEREAFTER PRESENTS EVIDENCE TO THE COURT.

Under our law, attorneys fees are awardable only if expressly provided by contract or statute and then only if there is produced to the Court evidence of the necessity and reasonableness of the fee awarded. Walker v. Sandwick, 548 P.2d 1273 (Utah 1976). There is no question that the sales contract

in issue did provide for attorneys fees if an attorney was utilized to enforce collection of the contract. See Plaintiff's Exhibit "1", reverse side, Paragraph 4.

The establishment of a reasonable attorneys fee in a contested matter is not controlled by any set formula [Wallace v. Build, Inc., 16 Utah 2d 401, 402 P.2d 699 (1965)] and the same may be established by stipulation, an un rebutted affidavit or evidence given as to the value thereof. Freed Finance Company v. Stoker Motor Company, 537 P.2d 1039 (Utah 1975). Regardless of how the fee is proved, it is clear that the fee must be supported by evidence in the record. See Richards v. Hodson, 26 Utah 2d 113, 485 P.2d 1044 (1971).

Counsel for Defendants suggests two propositions as to why attorneys fees should not be granted: first, he indicates there is no evidence in the record, and second, that no evidence was presented to the jury.

As to the first proposition, the record evidences that after the Court directed a verdict in favor of Plaintiff, Counsel sought for a hearing to establish his claim for attorneys fees and for entry of judgment based upon the of Court's granting of Plaintiff's motion for directed verdict at trial. (R. 336). The motion was initially scheduled for November 23, 1981, and was rescheduled to be heard on December 2, 1981, at the request of Counsel for Defendants (R. 338) who, after receiving notice of the hearing and a copy of Counsel's

Affidavit for attorneys fees, neither attended the hearing nor opposed the reasonableness of the fees in the Affidavit.

(R. 540). Counsel did forward his motion requesting a denial of the attorneys fees because of failure to produce evidence before the jury but did not challenge the reasonableness of the fees.

(R. 342). Consequently, the Court properly awarded attorneys fees after the trial based on proper evidence, and an unrebutted affidavit. (R. 536-538; R. 539); See Freed Finance Company v. Stoker Motor Company, supra.

The second question raised is whether failure of Counsel to provide testimony before the jury for its consideration precludes the subsequent entry of the award. It is true that attorneys fees must be proved as other damages, that is, by stipulation or evidence, [Cluff v. Culmer, 556 P.2d 498 (Utah 1976)] but the question is, to whom must the reasonableness of the fee be proved? This Court has long held that the judiciary has the power to determine what is a reasonable attorneys fee when a claim therefor is properly in issue by contract or by statute. Thatcher v. Industrial Commission, 115 Utah 568, 207 P.2d 178 (1949). Further, as stated in Wallace v. Build, Inc., 402 P.2d 699, 701, (1965):

What is reasonable depends upon a number of factors, the amount in controversy, the extent of services rendered and other factors which the trial court is in an advantaged position to judge. Emphasis added.

In F.M.A. Financial Corporation v. Build, Inc., 17 Utah

2d 80, 404 P.2d 670 (1965), the Court recognized that an award of attorneys fees need be supported by some evidence to the judge, stating at page 673 of 404 P.2d:

Because both judges and lawyers have special knowledge as to the value of legal services, this (proof of fees) is not always required to be proved by sworn testimony. It is sometimes submitted upon stipulation as to the amount; or that the judge may fix it on the basis of his own knowledge and experience; and/or in connection with reference to a bar approved schedule. Emphasis added; matter in parenthesis and underlining by author.

From the authorities cited, it is evident that the reasonableness of an attorneys fee is a matter for court determination. The reasonableness of this position affords the trial judge, himself an experienced lawyer, the opportunity of determining what is reasonable in a given case. Laymen jurors, unfamiliar with the demands and efforts of counsel, would not be in a position to identify what is reasonable in a given case. Producing such evidence would be a waste of the jurors' time. Further, if evidence concerning reasonableness of attorneys fees is produced before the jury, this puts counsel in the awkward situation not only of having to argue the cause of his client on its merits but to justify before the jury his charges for his services, thus requiring counsel to, "have a fool for a client".

A reading of the case of Gardner v. Christiansen, 622 P.2d 782 (Utah 1980), might cause one to conclude that an award of attorneys fees must be based upon evidence produced in the case

Correction to Brief of Plaintiff-Appellant
General Motors Acceptance Corporation

GENERAL MOTORS ACCEPTANCE
CORPORATION,

Plaintiff,

vs.

HECTOR MARTINEZ and
MANUEL M. RIVERA,

CASE NO. 18072

Defendants,

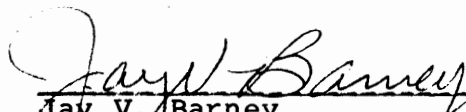
vs.

GREAT EQUITY LIFE INSURANCE
COMPANY, et.al.

Correction to Page 15 of Brief of General Motors Acceptance Corporation: The last sentence of the carry-over paragraph starting at line 10 and ending at line 14 should read:

In fact, in Provo City Corp. v. Cropper, 28 Utah 2d 1, 497 P2d 629 (1972), the Supreme Court remanded the case to the District Court for the purpose of taking evidence on the issue of attorney's fees, when such evidence was omitted in the proceedings below.

Respectfully submitted,


Jay V. Barney
Attorney for Plaintiff-Appellant,
General Motors Acceptance
Corporation.

in chief and not after. Here, Counsel, after resting his case and prior to closing argument, moved to reopen, in a hearing before the judge, to produce evidence of attorneys fees, which was denied by the Court. On appeal, the Court although recognizing that a motion to reopen for additional evidence is within the sound discretion of the Court, nevertheless ruled the trial Court abused its discretion in failing to allow counsel to present the requested evidence. The case does not stand for the position that evidence of attorney's fees must be made prior to resting one's case. In fact, in Provo City Corp. v. Cropper, 28 Utah 2d 1, 497 P.2d 629 (1972), the Supreme Court remanded the case to the District Court for the purpose of taking evidence on the issue of attorney's fees, when such evidence was omitted at trial.

Even assuming that the jury was the proper forum to have heard the evidence relative to attorneys fees, failure of counsel to present evidence to the jury would not be fatal to the award rendered by the Court in the instant case. Then, the Court directed a verdict for Plaintiff at the close of all the evidence, the Court took all issues relating to Plaintiff's case from the jury. Therefore, it also had the discretion to receive such further evidence in the case as it deemed pertinent. See Gardner v. Christiansen, supra.

In the exercise of its discretion, the lower Court granted Counsel for Plaintiff, after notice to Defendants' Counsel, an

opportunity to present its claim for attorneys fees and accepted the affidavit as presented. Such discretion in proceeding was not prejudicial to the rights of Defendant (See Gardner v. Christiansen, supra at 784), especially where the affidavit of Plaintiff's Counsel as to the reasonableness of the fees was unopposed. See Freed Finance Company v. Stoker Motor Company, supra.

For the reasons above stated, the judgment of the lower Court awarding attorneys fees should be upheld.

POINT III

CERTAIN ALLEGATIONS OF COUNSEL FOR DEFENDANT IN HIS STATEMENT OF FACTS ARE MISLEADING AND CONFUSING

Counsel for Plaintiff begs the indulgence of the Court to one further point. Because of time limitations on oral argument when granted, counsel felt it important to call to the Court's attention certain matters that have been stated by counsel for Defendant that tend to be misleading and confusing.

At page 2 of the Statement of Facts of Defendant's brief, Defendant alleges:

The Conditional Sales Contract did provide that should Hector Martinez die or become totally disabled, the Great Equity Life Insurance Company of Chicago, Illinois would pay off the contract in its entirety.

The Conditional Sale Contract in this case made no such provision that would have any effect upon Hector Martinez.

The Contract, on its face, had a provision that suggests that the Prudential Insurance Company of America, Newark, New Jersey, by virtue of group policy #GL360, could issue life and disability insurance. However, to accept this particular policy, the Buyer was required to sign in the box related to this item. Hector Martinez neither signed nor agreed to a policy with Prudential, but rather elected a policy provided through the agent of Streator Chevrolet with Great Equity Life. Consequently, counsel's reference to this portion of the Conditional Sale Contract is misleading and has nothing to do with the terms and conditions of the disability policy issued by Great Equity Life.

Additionally, at page 9, counsel for Defendant suggests that Streator Chevrolet was required to take an age and health statement from Mr. Martinez according to the provisions on the face of the Contract relating to the Prudential Insurance Company information. Again, as previously indicated, this provision had no relevance to the contract as this company was not utilized. See also Brief of Third-Party Defendants-Respondents at Pages 17-19.

At page 27 of counsel's brief, it is suggested that Mr. Rex Elton was empowered by GMAC to write insurance for Great Equity. At no place in the testimony given before the trial Court was there any evidence whatsoever indicating GMAC empowered Mr. Elton to do anything, including the writing of insurance.

Specifically, see pages 370, 371 of the Record.

At page 28, counsel suggests that GMAC undertook to interpret the policy of insurance. Again, this is a misstatement of the facts. It is acknowledged that a letter was forwarded to Mr. Martinez after GMAC received notice from Great Equity Life that it was denying coverage based on a preexisting condition. Upon sending a letter to Mr. Martinez requesting additional payment, the author of the letter, apparently being confused about the policy, adopted language from the Prudential Insurance Company information contained on the Conditional Sales Contract as the basis for the denial. See Defendant's Exhibit "15". Although the provision cited was in error, and unrelated to this contract as previously explained, the factual position was still accurate based upon the representations of Great Equity Life, namely that Great Equity Life was denying coverage under the policy to Mr. Martinez because of a pre-existing condition which the insurance carrier asserted should have been known to Mr. Martinez. See Plaintiff's Exhibit "12". GMAC's letter, regardless of the reasons for denial by the insurance carrier, was to inform Mr. Martinez of his obligation to bring his payments current and fulfill his contract. The decision not to pay the disability was that of Great Equity Life and not that of General Motors Acceptance Corporation.

CONCLUSION

For the reasons as set forth in Plaintiff's Brief,

judgment of the lower Court in favor of Plaintiff and against Defendants should be upheld and further, the attorneys fees of \$2,500.00 as established to the satisfaction of the Court should be awarded.

Respectfully submitted,

JAY V. BARNEY,
Attorney for Plaintiff-Respondent,
General Motors Acceptance Corporation

CERTIFICATE OF DELIVERY

This is to certify that on the _____ day of February, 1982, a true and correct copy of the foregoing BRIEF OF PLAINTIFF-RESPONDENT GENERAL MOTORS ACCEPTANCE CORPORATION was given to The Runner Service to be delivered to the following:

Mr. Mark S. Miner
525 Newhouse Building
10 Exchange Place
Salt Lake City, Utah 84111
Attorneys for Defendants-
Appellants, Hector Martinez
and Manuel M. Rivera

Mr. William J. Hansen
900 Kearns Building
Salt Lake City, Utah 84101
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Defendant-Respondent Great
Equity Life Insurance Company