

1982

General Motors Acceptance Corp. v. Hector Martinez et al : Reply Brief of Defendants- Appellants

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. :

REPLY BRIEF OF DEFENDANTS-APPELLANTS
HECTOR MARTINEZ and MANUEL M. RIVERA

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

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POINT

THE COURT ERRED IN ITS AWARD OF ATTORNEY'S FEES
TO GENERAL MOTORS ACCEPTANCE CORPORATION IN THE
SUM OF \$2,500.00.

At the conclusion of Plaintiff's case on September 9,
1981, the Plaintiff refused to submit any evidence of any type
or nature to the jury on the issue of attorney's fees, well-knowing
that this was a suit on a contract and one of law. The Plaintiff's
attorney was respectfully requested to submit any issue of attor-

ney's fees to the jury and Plaintiff's attorney, Jay V. Barney, absolutely refused to do so. (TR. 343). The above-entitled cause was subsequently appealed to the Utah Supreme Court, to-wit, on October 19, 1981. Judgment was entered against the Defendants September 23, 1981. (TR. 326). The transcript was filed in the Utah Supreme Court on December 2, 1981. Under the law, the above-entitled cause was submitted solely to the jurisdiction of the Utah Supreme Court on September 23, 1981. After that date, all matters pertaining to the trial of the cause were subject to the jurisdiction of the Supreme Court. On November 20, 1981, there was filed with the District Court of Salt Lake County an affidavit seeking \$2,507.00 attorney's fees. The affidavit consists of six paragraphs and seeks \$2,507.00 attorney's fees on a suit involving \$4,700.00. It further seeks attorney's fees for services rendered in defiance of Plaintiff's opportunity and right to present said cause to the jury during the trial.

The Plaintiff so failed to address the issue of attorney's fees during the trial, well-knowing that this was an action of law and that these Defendants were entitled to have the issue of attorney's fees determined by the trial of fact on the basis of proper evidence, just as any other question of fact. See FMA Financial Corporation v. Build, Inc., Utah 2d 80, 404 P.2d 670, 673-4 (1965). The only

exception to that rule is when the parties stipulate as to the amount or the court's determination of the amount without submission of the evidence to the jury. In this case, there was no stipulation and the Court did not take any evidence outside the presence of the jury, nor did the Court receive any evidence of any type or nature other than the November 20, 1981, affidavit concerning attorney's fees. See Swain v. Salt Lake Real Estate and Investment Company, 279 P.2d 709, 711 (Utah 1955); Ashworth v. Charlesworth, 231 P.2d 724, 729 (Utah 1951).

This Court has repeatedly held that a jury trial should be provided to the parties on all issues of fact raised in a contract action. See Valley Mortuary v. Fairbanks, 225 P.2d 739, 749 (Utah 1950); Petty v. Clark, 129 P.2d 568, 570 (Utah 1942). This case involves no equitable issues. Hector Martinez had an absolute right to have the legal issue of attorney's fees submitted to the jury. It is undisputed that Plaintiff's claim to recover money under a written contract is clearly an issue of fact and whether or not fees are fair and reasonable gives rise to an issue of law which must be submitted to a jury. See FMA Financial Corporation v. Build, Inc., supra, at 673-74. To permit the Court to award \$2,500.00 attorney's fees two and one-half months after the case had been tried by the jury on the basis of a delayed affidavit, in


effect, deprives these Defendants of their right to a trial by jury. In fact, these Defendants were entitled to have all issues tried by the same jury. In FMA Financial Corporation v. Build, Inc., supra, this Court held that attorney's fees must be based on evidence before the Court. In this regard, the Defendants urged and requested and demanded that the Plaintiff present the issue of attorney's fees to the jury during the trial of said cause in chief. The Plaintiff refused. Other than the affidavit described above, there is no evidence upon which the Court could make a finding of attorney's fees. The Plaintiff refused to offer proof of any character during the case in chief and the filing of the affidavit and the granting of a judgment thereon was made after the Defendants' objection was made. It is submitted that there is no evidence upon which a find of attorney's fees could be supported. See Richards v. Hodson, 485 P.2d 1044, 1046 (Utah 1971), where this Court has repeatedly held that attorney's fees cannot be allowed unless there is evidence to support them.

Accordingly, Hector Martinez and his father, Manuel M. Rivera contend that under the case law these Defendants were entitled to have the issue of attorney's fees submitted to the jury, just as any other issue of fact and to have that issue determined by the same jury that determined the other issues of fact.

CONCLUSION

The Plaintiff by refusing to submit the issue of attorney's fees at the conclusion of their case, even though they were urged to do so, waived their right to attorney's fees and none should be awarded.

Respectfully submitted this 5th day of October, 1982.



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CERTIFICATE OF SERVICE

This is to certify that on the 5th day of October, 1982, a true and correct copy of the foregoing REPLY BRIEF OF DEFENDANTS-APPELLANTS HECTOR MARTINEZ and MANUEL M. RIVERA was served by mailing same, to Jay V. Barney, 45 East Vine Street, Murray, Utah 84107 and to William J. Hansen, 900 Kearns Building, Salt Lake City, Utah 84101.