

1957

Remington Rand, Inc. v. Thurman E. O'Neil et al : Brief of Appellants

Utah Supreme Court

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IN THE SUPREME COURT

OCT 31 1957

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of the

STATE OF UTAH

REMINGTON RAND, INC.,
a corporation,

Appellant and Plaintiff,

—vs.—

THURMAN E. O'NEIL and
LOIS S. MACHADO, fdba A-1
Typewriter Company,

Defendants,

—vs.—

DALE E. GRANT and UTAH CASH
REGISTER EXCHANGE, INC., a
corporation,

*Respondents and
Garnishee Defendants*

FILED

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Clerk, Supreme Court, Utah

No. 8598

BRIEF OF APPELLANTS

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BRIEF OF APPELLANTS

FACTS OF THE CASE

This case was before the Supreme Court on a prior appeal taken by Dale E. Grant and Utah Cash Register Exchange, Inc. The present appeal is by Remington

Rand, Inc., from an order of the District Court of Salt Lake County granting the motion of Grant and Utah Cash Register for Summary Judgment in a Garnishment proceeding.

On January 24, 1955, Appellant Remington Rand, Inc., recovered a judgment against Thurman E. O'Neil for \$4,243.82 (R. 68). In an attempt to satisfy this judgment, Garnishments were served on Utah Cash Register Exchange, Inc., and Dale E. Grant on March 18, 1955 (R. 62, 60). On March 26, 1955, the Garnishees filed their Answers to the Interrogatories contained in the Garnishments (R. 64, 65).

On April 5, 1955, Remington Rand filed its Reply to Answers of Garnishees (R. 83, 84) and on April 18, 1955, judgment against the Garnishees was ordered by the District Court of Salt Lake County. On April 19, 1955, formal Garnishee Judgment against Garnishee Grant in amount \$3,600.00 was signed (R. 66, 67).

On April 27, 1955, Garnishee Grant served his Motion to Vacate and Set Aside Garnishee Judgment. This motion was set for hearing on May 2, 1955 (R. 71, 72, 73, 74, 75) at which time judgment against both garnishees was entered *nunc pro tunc* as of April 19, 1955, in amount \$3,600.00 (R. 51, 52, 54, 55, 56).

On June 6, 1955, Garnishees Grant and Utah Cash Register appealed from the judgment against them (R. 80), and on February 15, 1956, this court filed its deci-

sion reversing that judgment (R. 162). The reversal was based upon the fact that no proof was made that the Reply to the Garnishees Answers was served upon the Garnishees. Remington Rand filed Petition for Rehearing but rehearing was denied on June 21, 1956 (R. 161).

On July 27, 1956, Garnishment was again served upon Utah Cash Register and Grant (R. 155, 157). The garnishees filed their Answers to the Interrogatories contained in said Garnishments on August 4, 1956 (R. 159, 160), and on August 15, 1956, plaintiff served and filed its Reply to Answers of Garnishees (R. 165, 166).

Later, the garnishees served Interrogatories upon Remington Rand designed to point out that no indebtedness other than that referred to in the original Reply to Answers of Garnishees was claimed. This was admitted by the Answers to Interrogatories filed September 11, 1956 (R. 167, 168, 173, 174). On October 3, 1956, Garnishees moved the District Court of Salt Lake County for Summary Judgment. Judgment was entered on October 25, 1956, (R. 183, 184), whereby it was ordered that all claims of Remington Rand against Garnishees Grant and Utah Cash Register arising out of any indebtedness prior to the second Garnishments be not further maintained against the garnishees. This judgment was based upon the conclusion that the failure to *serve* a Reply in the original garnishment proceedings concluded Remington Rand from asserting indebtedness arising

prior to that time. It was also ordered that the request of Remington Rand for leave to file an Amended Reply in the original Garnishment proceedings be denied. From this judgment Remington Rand appeals.

STATEMENT OF POINTS

I. THE DISTRICT COURT ERRED IN GRANTING THE MOTION OF GARNISHEE DEFENDANTS FOR SUMMARY JUDGMENT.

II. THE DISTRICT COURT ABUSED ITS DISCRETION IN DENYING PLAINTIFF'S MOTION FOR LEAVE TO FILE AN AMENDED REPLY TO THE ANSWERS TO THE INTERROGATORIES CONTAINED IN THE ORIGINAL GARNISHMENTS.

ARGUMENT

I. THE DISTRICT COURT ERRED IN GRANTING THE MOTION OF GARNISHEE DEFENDANTS FOR SUMMARY JUDGMENT.

The garnishees successfully urged their Motion for Summary Judgment in the trial court by contending that the effect of the decision of February 15, 1956, by the Supreme Court was to void Remington Rand's Reply to the Answer of the Garnishees because it was not proved that it was served upon the Garnishees. Garnishees therefore contended that Remington Rand had, in legal effect, failed to reply at all, and under the provisions of Rule 64D(i), Utah Rules of Civil Procedure, "is deemed to have accepted the Reply as correct".

Thus, the garnishees contended, Remington Rand is forever bound by the denial of indebtedness asserted by the Garnishees in their Answer. The trial court accepted this view and incorporated it in the judgment now under attack in this appeal.

This interpretation of Rule 64(i) is both strained and technical and distorts and extends the true meaning of the decision of this Court in the former case in that it gives conclusive effect to a decision in which the merits of the controversy were not under consideration.

Rule 64D (h), Utah Rules of Civil Procedure, provides in part:

“If the garnishee answers, the plaintiff may, within ten days after the expiration of the time allowed for the filing of such answer, serve upon the garnishee and file a reply to the whole or any part thereof . . .”

Rule 64D (i) provides in part:

“If the plaintiff fails to reply to the answer of the garnishee, he shall be deemed to have accepted it as correct, and judgment may be entered thereon.”

Rule 64D (i) itself employs different language from that employed in Rule 64D (h). Rule 64D (i) relates to failure to *reply*; Rule 64D (h) relates to service and filing a Reply. Rule 64D (i) does not say that the plaintiff shall be deemed to have accepted the garnishee’s

answer as correct if he fails to *serve* a Reply as contended by the garnishees in this case.

The general rule where the garnishee defendant has not obtained a judgment discharging him from responsibility under the garnishment is that successive writs may issue during the pendency of the proceeding. In *Lyon v. Pittsburgh Allegheny and Manchester T. Co.*, (Pa., 1933) 169 A. 229, Lyon served garnishment on Pittsburgh which answered in such a way as to defeat a judgment. Thereafter, Lyon served a further garnishment and Pittsburgh moved to quash. In affirming the judgment of the lower court in favor of Lyon, the Supreme Court of Pennsylvania said that since the second writ was not vexatious, Lyon could have as many forms as necessary to obtain satisfaction of his claim. See also 33 C. J. S. 367 (Garnishment, Sec. 151).

Where, however, the garnishee has obtained a judgment on the merits, such a judgment is *res judicata* and the issues embraced may not be further litigated. But, if the garnishee is discharged on a ground unrelated to the merits of the controversy such a judgment does not preclude a further writ from issuing.

In *Marsh, Jr. v. Phillips, Jr. and Coe*, 77 Ga. 436 (1886), the Supreme Court of Georgia had before it this question: Can Garnishment be served again on the same garnishee after judgment has discharged him? The court said: Not if the judgment was on the merits

but if “on a mere technical point” the garnishee may be served again.

Where the statute or rule requires that the answers to the interrogatories contained in the garnishment be contested within a specified time, it is incumbent upon the plaintiff to make a proper issue within the time allowed. Thus, in *Phelps v. Schmuck* (Kan., 1940) 100 P. (2d) 67, where the garnishee insurance company denied indebtedness to the defendant on August 13, 1937, and the plaintiff filed a further writ on June 8, 1938, the previous answers became conclusive of the truth of the facts stated and the plaintiff was held to have no further right to proceed against the garnishee.

The court noted that the plaintiff did nothing indicating any intention to take issue with the answers. The statute required that within twenty days the plaintiff shall *serve* a notice in writing that he elects to take issue on the answer.

No such requirement is found, however, under our Rules, unless such requirement be imposed by judicial legislation.

A statute imposing rigid requirements upon a party should not be extended beyond the fair import of its language, for to do so would be to seriously limit the efficacy of garnishment proceedings.

Reported decisions discussing this rather obscure point are few, perhaps because the vast majority of garnishments issue out of courts of limited jurisdiction. Nevertheless, as has been said:

“Garnishment is the most modern, and at the same time the cheapest and most effectual, remedy known to the law. While it is more especially the small creditor’s remedy, it is nonetheless adapted to use in more important cases, and our court reports abound with cases in which judgments for many thousands of dollars have been collected by this means. For one payment that is enforced by execution, attachment, or bill in chancery, twenty are collected by garnishment.”
Rood on Garnishment, Preface, p. iii (1896).

II. THE DISTRICT COURT ABUSED ITS DISCRETION IN DENYING PLAINTIFF’S MOTION FOR LEAVE TO FILE AN AMENDED REPLY TO THE ANSWERS TO THE INTERROGATORIES CONTAINED IN THE ORIGINAL GARNISHMENTS.

If the trial court was disposed to the view that successive writs could not issue, then the trial court should in its discretion have permitted the serving and filing of a Reply to the original Answers made by the garnishees. There was a genuine issue between these parties as is amply demonstrated by the fact that at the first trial, Remington Rand recovered a judgment against these garnishees for \$3,600.00.

The ordinary effect of the reversal of a judgment is to place the matter in the position that it was before

the erroneous proceedings were had. See *Phebus, et al v. Dunford, Judge, et al*, 114 Utah 292, 198 P. (2d) 973 (1948), where this court said:

“A reversal of a judgment or decision of a lower court such as this places the case in the position it was before the lower court rendered that judgment or decision, and vacates all proceedings and orders dependent upon the decision which was reversed.”

Here, the garnishment proceedings should have continued from the point prior to the trial of the issues. 5 C.J.S. 1547 (Appeal and Error, Sec. 1986). This court did not hold that it was error to proceed to trial at all, but simply that it was error to proceed to trial without proper notice to the garnishee defendants.

It must be noted here that the garnishee defendants did not seek a judgment under Rule 64D (i), discharging them from responsibility under the Garnishments because of the failure of the plaintiff to serve a Reply upon them, until an adverse judgment had been entered against them. Had they done so, the court would have noted that a Reply had been filed within the time allowed and would have undoubtedly extended the time for serving the Reply under the discretionary powers given by Rule 6 (b) permitting the enlargement of time after the expiration of the specified period.

This matter still being unresolved at the time Garnishees moved for Summary Judgment, the District Court

should have permitted the serving and filing of a Reply to the original Garnishments.

CONCLUSION

The entire tenor of the brief filed by Dale E. Grant and Utah Cash Register Exchange, Inc., in the previous appeal, No. 8379, was to the effect that all they wanted was an opportunity to be apprised of the claim against them and an opportunity to fully litigate those issues. This is precisely what they now seek to deny Remington Rand. They say there is no issue of fact even though when this matter was tried, a judgment was entered against them.

It is submitted that there is a substantial issue between Remington Rand and the Garnishees and that this issue should be decided either on the Garnishments served after the reversal of the prior judgment or in the original proceedings, appealed from by the Garnishees.

Respectfully submitted,

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