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John H. Klas v. Mark O. Van Wagoner and Kathryn Van Wagoner : Response to Petition for Rehearing

Utah Court of Appeals

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900493-CA

JOHN H. KLAS,

Plaintiff/
Appellant,

VS.

Case No. 900493-CA

MARK O. VAN WAGONER and
KATHRYN VAN WAGONER,

Defendants/
Appellees.

APPELLANT'S BRIEF IN OPPOSITION TO REHEARING

AN APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT
OF SALT LAKE COUNTY, THE HONORABLE RAYMOND S. UNO, JUDGE

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IN THE UTAH COURT OF APPEALS

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Plaintiff/
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The Appellant, John Klas, respectfully upon request of the Court submits his Responsive Brief to the Petition for Rehearing filed by Appellees in this matter.

POINT I

**ON APPEAL IN EQUITY CASES, APPELLATE COURT MAY MAKE
FACTUAL FINDINGS IF DOING SO BEST SERVES THE
INTERESTS OF JUSTICE**

In their Petition for Rehearing, the Defendants contend that this Court exceeds its jurisdiction by making factual findings. They ignore a well established principle that an appellate court may engage in fact finding in equity cases if it feels the interests of justice would be best served by doing so. In Hatch v. Bastian, 567 P.2d 1100, 1101 (Utah, 1977) our Supreme Court held that since a suit for rescission is a case in equity, it could, on

appeal, review the evidence and to make its own findings of fact if it is convinced that the interests of justice so require it. Furthermore, the appellate court may disturb the trial judge's factual findings if it feels he has misapplied the law so that an injustice has resulted. Izatt v. Izatt, 627 P.2d 49, 52 (Utah 1981). Also, the Court may disturb the Findings of Fact if it "reaches a definite and firm conviction that a mistake has been made." Western Capital and Securities v. Knudsvig, 768 P.2d 989, 991 (Utah. App. 1989). See also, State v. Walker, 743 P.2d 191 (Utah, 1987).

At no point in its Opinion does this Court reject the trial court's factual findings. In fact the Court's Opinion clearly demonstrates an exhaustive review of the evidence and the Findings of Fact. The only factual finding which this Court determines to be clearly erroneous was that involving the range of the appraisals. This Court, on page 3 of its Opinion, stated in footnote 3:

Plaintiff questions the trial court's finding that the three appraisals to which Carol Klas referred ranged from \$175,000.00 to \$192,000.00. It is clear from the record that both Carol Klas and Mark Van Wagoner understood the range of those appraisals to begin at \$170,000.00, not \$175,000.00. Thus, we conclude that the trial court's finding that the three appraisals ranged from \$175,000.00 and up was clearly erroneous. Bell v. Elder, 782 P.2d 545, 547 (Utah. App. 1989). (emphasis added)

The Court has stated that it had reviewed the record and has

determined that the trial court committed an error in making its Findings of Fact. In light of the above cited cases, this Court was clearly within its authority to make such a finding. It is Plaintiff's position that this Court has not engaged in fact finding of its own. However, even if it did, it would not be exceeding its jurisdiction since it is empowered to do so in this type of case and under the circumstances spelled out by the above authorities.

Also, Defendants state repeatedly that Plaintiff has an obligation to challenge the trial court's Findings of Fact without citing any authority to support that proposition. The basis of this Appeal and the main issue involved herein is not whether the trial court's Findings of Fact were clearly erroneous but whether the trial court misapplied the law to the facts. This Court's Opinion states this as the issue and cites the case of Bellon v. Malnar, 808 P.2d 1089 (Utah, 1991) in pronouncing the applicable standard for reviewing the trial court's legal conclusions. There is no authority cited which holds that both the Findings of Fact and Conclusions of Law need to be challenged in order to succeed on appeal.

Defendants challenge this Court's Opinion wherein it held that the difference of \$5,000.00 between the Kent Appraisal and the lowest of the other three informal appraisals was not unconscionable. Defendants argue that this Court was making a factual finding in stating there was no unconscionability. It is

a generally accepted and well established rule that unconscionability of a contract or a clause therein is a matter of law and not a question of fact. Utah Code Annotated, §70A-2-302(1), 1953 as amended. See also, Annot. 18 A.L.R. 3d 1305. The finding that the difference in value was material to the Defendants was not changed or challenged by this Court. However, a ruling that the difference was not "unconscionable" as a matter of law was clearly a matter for this Court to decide on appeal.

POINT II

THE COURT DID NOT RETROACTIVELY APPLY A NEW STANDARD FOR UNILATERAL MISTAKE AS IT PERTAINS TO THIS CASE.

The Appellees in Point III of their Petition for Rehearing raise a novel argument and suggest that this Court should not retroactively apply a "new standard" for unilateral mistake. The trial of this cause was concluded on the 12th day of May, 1989 and the Memorandum Decision of the trial court rendered in favor of the Plaintiff on May 30, 1989.

The case of Guardian State Bank v. Stangl, 778 P.2d 1 (Utah, 1989) was decided by the Utah Supreme Court on July 13, 1989, approximately one and one-half months after the trial court's Memorandum Decision. According to the Defendants, the trial court's Memorandum Decision of May 30, 1989 should have applied the law existing on that date and any retroactive application of a "new standard" after that date would be improper. Nevertheless, the Defendants learned of the Stangl case, at which point they then

sought to modify the decision of the trial court in asking that the law as announced in Stangl be applied retroactively to the law which existed at the time of trial. Defendants now suggest that it is inappropriate for this Court to consider the standard set forth in Grahn v. Gregory, 800 P.2d 320 (Ut.App. 1990) on the basis that it would place a "burden upon the trial court's Conclusions of Law which did not even exist until five months after the trial court made those Conclusions of Law based on Stangl." We respectfully submit that the Defendants cannot have it both ways and that the argument set forth is totally specious.

This is not a question of Ex Post Facto Law, it is merely a simple premise and conclusion situation. If the conclusion is predicated upon an erroneous premise it cannot stand. The Defendants have not cited any authority to support their contention which is spelled out in Point III of their Petition for Rehearing. Furthermore, as discussed below, the standard set forth in Grahn is not a new standard.

POINT III

THE STANDARD APPLIED IN THE COURT'S OPINION IS THE SAME ESTABLISHED BY THE UTAH SUPREME COURT

Defendants claim that this Court's Opinion either retroactively applies a "new standard" for unilateral mistake or creates a "new standard" which supplants the standard set by the Utah Supreme Court. Such a contention is erroneous and without any basis whatsoever. It is apparent the Defendants have totally

ignored the basis for this Court's thorough and well reasoned opinion.

The four factors referred to in the case of Grahn v. Gregory, 800 P.2d 320 (Ut. App. 1990) and applied in this Court's Opinion are not a new creation by this Court. They were clearly established and spelled out by the Utah Supreme Court in the 1987 case of John Call Engineering v. Manti City Corp., 743 P.2d 1205, 1209 (Utah 1987) which cited even earlier cases including Briggs v. Liddell, 699 P.2d 770 (Utah 1985). The four elements of relief for unilateral mistake contained in this Court's Opinion are taken from these earlier Utah Supreme Court cases and are used as the basis for that Opinion. This Plaintiff cannot find and Defendants have not cited any authority which hold that this standard has been changed, overruled or modified in any way.

In its decision in Guardian State Bank v. Stangl, 78 P.2d 1 (Utah 1989), the Utah Supreme Court did not establish a "new standard" for unilateral mistake. It simply discussed the evolution of the doctrine of unilateral mistake and serves to clarify the existing law. In Stangl the Court acknowledged that some of its prior decisions had led to a misunderstanding that relief was available only for mutual mistake. However, it clarified its position on this issue recognizing that relief may be granted on the basis of unilateral mistake. Id. at 5. At no point did it overrule its prior decisions in John Call Engineering or Briggs, supra or rule that the standard set forth in those cases

was erroneous.

This Court specifically cited Stangl acknowledging it as a discussion of the doctrine of unilateral mistake. It did not attempt to set forth a new standard or supplant an existing one. It specifically relied upon the controlling standard handed down by our Supreme Court.

POINT IV

COURT MUST GIVE EFFECT TO THE FUNDAMENTAL AGREEMENT OF THE PARTIES

In Stangl, supra at 6, the Utah Supreme Court stated:

In its most simple and most straightforward sense, the law really only enforces the intent of the parties as to the fundamental agreement between them;

In the present case, both Defendants were fully aware that Plaintiff would only accept an offer within the range of \$170,000 to \$192,000 and on the condition that there be no contingencies, exceptions, or conditions. The Defendants agreed to those provisions and even prepared the Agreement to be used. There was no provision conditioning the Agreement on the production of written appraisals by the Plaintiff. The written Agreement speaks for itself and spells out the intent of the parties which should be given effect.

In their Petition, the Defendants state that the knowledge of Mark Van Wagoner as an attorney, is somehow being imputed to Kathryn Van Wagoner. Such is not the case. Kathryn Van Wagoner, as a signatory to the contract, is simply being bound by its terms

and provisions and charged with the knowledge of its contents which are very clear and straightforward. Any argument that she should somehow be relieved of liability because she did not have the knowledge of an attorney is without any basis.

In John Call Engineering, cited supra, at 1207-1208, the Utah Supreme Court stated:

Generally, one party to an agreement does not have a duty to ensure that the other party has a complete and accurate understanding of all terms embodied in a written contract. Rather, each party has the burden to read and understand the terms of a contract before he or she affixes his or her signature to it. A party may not sign a contract and thereafter assert ignorance or failure to read the contract as a defense. This rule is based upon the panoply of contract law upholding the principle that a party is bound by the contract which he or she voluntarily and knowingly signs. (emphasis added)

Kathryn Van Wagoner had ample opportunity to review the Agreement and discuss its contents with her husband before signing it. She certainly could have consulted with her husband and relied on his expert legal advice before affixing her signature to the Agreement. Nevertheless, she is charged with knowledge of its contents and should be bound thereby.

CONCLUSION

The Plaintiff respectfully submits that the issues raised by the Defendant's Petition for Rehearing have been thoroughly briefed, argued and reviewed by this Court. This Court's Opinion clearly addresses the main issue on appeal and applies the

applicable standard of review in assessing the trial court's legal conclusions.

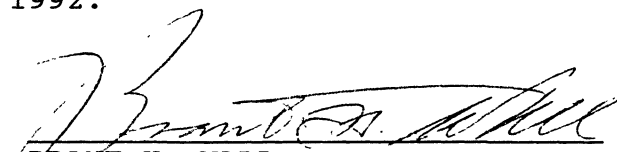
The Court has not embarked on any fact finding beyond that which it is empowered to do. It has, in fact, adopted the trial court's finding of fact but ruled that the application of the law to these facts was incorrect.

The law which was applied was not a new standard but rather the prevailing rule promulgated by our Supreme Court in several prior cases. Stangl is not a new standard for unilateral mistake and was not supplanted or ignored by this Court.

Finally, the Court must give effect to the Agreement signed by both Defendants who should both be charged with knowledge of its contents.

Based upon the foregoing, Plaintiff respectfully requests that Defendants' Petition for Rehearing be denied and that the provisions of this Court's Opinion and Order be enforced.

DATED this 28 day of May, 1992.


BRANT H. WALL
Attorney for Appellant

CERTIFICATE OF MAILING

This is to certify that a true and correct copy of the foregoing Brief was mailed, postage prepaid to Lewis T. Stevens, Alexander H. Walker, III and Kristin G. Brewer, VAN WAGONER & STEVENS, 215 South State, Suite 500, Salt Lake City, Utah 84111

this 29th day of May, 1992.

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Barbara Smith
Secretary to Brant H. Wall