1958

Felt Syndicate, Inc. v. Hartford Accident & Indemnity Co. : Brief in Answer to Petition for Rehearing

Utah Supreme Court

Moreton, Christensen & Christensen; Attorneys for Respondent;

Case No. 8736

IN THE SUPREME COURT
of the
STATE OF UTAH

FELT SYNDICATE, INC.
Plaintiff and Appellant,
—vs—
HARTFORD ACCIDENT & INDEMNITY COMPANY, a corporation,
Defendant and Respondent.

BRIEF IN ANSWER TO PETITION FOR REHEARING

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Subsequent to the Hartford's petitioning for rehearing in the Felt Case, as well as in the two companion cases, Felt Syndicate filed its own petition for rehearing, limited, however, to the points raised by Felt in its own appeal. Since the Hartford has petitioned for a rehearing, it of course desires that a rehearing be granted on the merits of all three cases. However, it is Hartford's position that the rehearing should be limited to the matters raised by the Hartford in its petition. We therefore deemed it advisable to file this short brief in answer to Felt's petition, lest by silence we be deemed to have acquiesced therein, or that the court might be misled into believing that we are agreeable to a rehearing on the entire issue.

We call to the court's attention the fact that Felt has raised nothing in its petition for rehearing that was not raised on its original appeal and was not fully argued and determined by the court. On its appeal Felt advanced two contentions:

1. That although it had assigned a portion of its claimed cause of action, it remained nonetheless the real party in interest as to the assigned portion of the claim, and was entitled to recover thereon.

2. That the Hartford had not plead as a special defense that Felt was not the real party in interest and therefore was barred from raising the point at the trial.

Both of these contentions were fully considered and examined by the court in its decision, and after consideration were determined adversely to Felt.

In its petition for rehearing Felt has simply reargued the same propositions, citing additional cases which it claims support its position. Significantly, Felt makes no attempt to distinguish the many Utah cases cited in our original reply brief, at least one of which was cited and relied upon by this court. Felt has demonstrated no grounds for granting a rehearing on the points raised by it on its petition.

From the earliest days this Court has been reluctant to grant petitions for rehearings, and no rehearing should be granted unless the petitioner can show that the Court has failed to consider some material point, or has erred in its conclusions or that some new matter

has been discovered which was unknown at the time of the hearing.

In the case of *Brown v. Pickard,* 11 Pac. 512, this Court, speaking through Judge Powers, said:

> "Nothing is now submitted as a reason why a rehearing should be granted that was not fully considered in the argument. No showing is made that satisfies the court that it should review its conclusions, and we are not convinced that we erred. We long ago laid down the rule that, to justify a rehearing, a strong case must be made. We must be convinced that the court failed to consider some material point in the case, or that it erred in its conclusions, or that some matter has been discovered which was unknown at the time of hearing. Vernard v. Old Hickory M. & S. Co., 7 Pac. Rep. 408. Where *a case has been fully and fairly considered* in all its bearings, a rehearing will be denied." (Emphasis ours)

Again in *Ducheneau v. House,* 11 Pac. 618, this Court, speaking through Justice Boreman, said:

> "The petition for rehearing states no new facts or grounds for a reversal of the judgment of the lower Court. *It is mainly a reargument of the case.* We have repeatedly called attention to the fact that no rehearing will be granted where nothing new and important is offered for our consideration. We again say that we cannot grant a rehearing unless a strong showing therefor be made. *A reargument, or an argument with the court upon the points of the decision,* with no new light given, is not such a showing." (Emphasis ours.)

And in *Cummings v. Nielson,* 129 Pac. 619, 624, this court, speaking through Justice Frick, said:

> "We desire to add a word in conclusion respecting the numerous applications for rehearings in this court. To make an application for rehearing is a matter of right, and we have no desire to discourage the practice of filing petitions for rehearings in proper cases. *When this court,* however, *has considered and decided all of the material questions involved in a case,* a rehearing should not be applied for, *unless we have misconstrued or overlooked some material fact or facts, or have overlooked some statute or decision which may affect the result, or that we have based the decision on some wrong principle of law, or have either misapplied or overlooked something which materially affects the result. In this case nothing was done or attempted by counsel, except to reargue the very propositions we had fully considered and decided.* If we should write opinions on all the petitions for rehearing filed, we would have to devote a very large portion of our time in answering counsel's contentions a second time; and, if we should grant rehearings because they are demanded, we should do nothing else save to write and rewrite opinions in a few cases. Let it again be said that it is conceded, as a matter of course, that we cannot convince losing counsel that their contentions should not prevail, but in making this concession let it also be remembered that we, and not counsel, must ultimately assume all responsibility with respect to whether our conclusions are sound or unsound. Our endeavor is to determine all cases correctly upon the law and the facts, and if we fail in this, it is because we are incapable of arriving at just conclusions. As a general rule, therefore,

> merely to reargue the grounds originally presented can be of little, if any, aid to us. If there are some reasons, however, such as we have indicated above, or other good reasons, a petition for a rehearing should be promptly filed, and, if it is meritorious its form will in no case be scrutinized by this court." (Emphasis ours.)

Hartford's petition for rehearing is based upon points advanced by it and overlooked by the court in the final determination of the cases. Felt's petition is based solely upon a reargument of all the contentions and propositions advanced by it initially, and fully considered and determined by the court.

We respectfully submit that Felt's petition for rehearing should be denied; that a rehearing should be granted, but that such rehearing should be limited to the points raised by the Hartford on its petition for rehearing.

Respectfully submitted,

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