1982

City Electric v. Dean Evans Chrysler-Plymouth : Brief of Respondent

Utah Supreme Court

Geoffrey Heath; Attorney for Plaintiff-Respondent;
Nick J. Colessides; Attorney for Defendant-Appellant;

IN THE SUPREME COURT

OF THE STATE OF UTAH

CITY ELECTRIC, a Utah corporation, Plaintiff & Respondent, vs. DEAN EVANS CHRYSLER-PLYMOUTH, a Utah corporation, Defendant & Appellant	:	Case No. 18248

BRIEF OF PLAINTIFF-RESPONDENT, CITY ELECTRIC

Appeal from the Judgment of
the Fourth Judicial District Court of Utah County
Honorable J. Robert Bullock, Judge

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NATURE OF THE CASE

Plaintiff-Respondent City Electric brought this action in the lower court to recover for amounts due for electrical materials and supplies purchased on the account of defendant-appellant Dean Evans Chrysler-Plymouth (hereinafter "Dean Evans Corp.").

DISPOSITION IN THE LOWER COURT

The Fourth Judicial Court, the Honorable J. Robert Bullock, awarded judgment for City Electric in the principal amount of $2,332.76 together with interest at the legal rate totalling $432.61 and costs in the amount of $79.00 as of January 11, 1982, for a total judgment of $2,855.37 as of that date, said judgment to bear interest at the rate of 12 percent per annum from January 11, 1982 until paid.

RELIEF SOUGHT ON APPEAL

City Electric seeks affirmance of the judgment of the lower court.

STATEMENT OF FACTS

The statement of facts contained in Appellant's Brief (pp. 2-3), as well as several factual assertions made

in the course of Dean Evans Corp.'s argument are unfortunately highly inaccurate in several respects and are not supported by the record. The facts as established by the record are as follows:

City Electric is engaged in the business of sales of electrical materials and supplies. During the period of time relevant to this action, Mr. Don Hatch was in charge of the inside sales in City Electric's Orem store.

During the same period of time, Mr. M. D. Evans (referred to in the record as Mike Evans) was an officer and director of Dean Evans Corp. Furthermore, as the trial court correctly found, Mr. Mike Evans was acting as sales manager and general manager of Dean Evans Corp. and had the basic day-to-day charge of the business. (See Findings of Fact No. 4 and testimony below contained in Record on Appeal (hereinafter referred to as "Rec."), pp. 61-62.)

During September, 1978, one of the employees of Dean Evans Corp. was a Mr. David Sturgill. Prior to his employment with Dean Evans Corp., Mr. Sturgill had been an employee of the City Electric Orem store. (Rec., p. 61.) At the time, Mr. Hatch was aware that Mike Evans was the son of Mr. Dean Evans Corp. and understood that Mike Evans had a management position with Dean Evans Corp. (Rec., p. 85.)

The trial court therefore correctly found (Findings of Fact No. 10) that Mr. Hatch understood that Mike Evans was one of the owners and had a managerial position with defendant. Likewise, of course, Mr. Hatch was aware that Mr. Sturgill was employed at Dean Evans Corp. (Rec., p. 84.)

Prior to the transactions in question, Dean Evans Corp. had established an open account with plaintiff in April, 1978. Charges had been made on this account and had been paid by Dean Evans Corp. (Rec., p. 66), as the trial court correctly found (Findings of Fact No. 7).

During early October, 1978, Mr. Sturgill called Mr. Hatch at City Electric regarding electrical materials and supplies to be purchased by Dean Evans Corp., and to inquire about prices. It is apparent from the record that Mr. Sturgill made this inquiry with Mike Evans' approval and at his instruction and the trial court correctly so found. (See Finding of Fact Nos. 5, 9 and testimony and affidavits of Mr. Sturgill and Mr. Hatch below, Rec. pp. 18, 20, 62, 83-85.)

It is likewise apparent from the record that Mr. Sturgill told Mr. Hatch that he was acting at Mike Evans' direction, and that the purchases should be charged to the Dean Evans Corp. account. The trial court therefore

correctly found that Mike Evans instructed the purchases to be charged to the Dean Evans Corp. account and that Mr. Sturgill informed Mr. Hatch that the purchase should be so charged. (See Findings of Fact Nos. 6 and 9, and affidavits and testimony of Mr. Sturgill and Mr. Hatch, Rec. pp. 18, 20, 62-64, 84-85.)

At trial, Dean Evans Corp. did not call Mike Evans -- or anyone else -- to the stand to testify that these charges were not authorized, nor did it introduce any other evidence to that effect. If such were the case, Dean Evans Corp. could easily have presented such evidence. (In fact, it introducted no evidence at all at trial and called no witnesses.)

This evidence and the resulting findings of the trial court demonstrate the speciousness of Dean Evans Corp.'s remarkable assertions that City Electric had "unilaterally decided to treat the purchase of the materials as an open account item and charge defendant's own credit account", and that there was "no written or oral agreement between plaintiff and defendant for the payment of the materials." (Appellant's Brief, p. 3.) Likewise, these findings and the supporting evidence belie Dean Evans Corp.'s assertion that "the only inference that can be made"

from Mr. Sturgill's testimony (which Dean Evans Corp. miscontrues, at the same time ignoring his affidavit) is that Mike Evans and Johnny Rider, individually, were trying to open an account for their own credit with City Electric. (Appellant's Brief, P.6.) (Furthermore, no mention is made in Mr. Hatch's testimony of any request that a new account be opened for these two individuals unrelated to the Dean Evans Corp. account, nor did defendant elicit such testimony or offer any testimony or evidence at all indicating that such a request was made.)

The trial court found, and the record demonstrates, that City Electric relied upon Dean Evans Corp.' s previously established credit in making the subject sales. (See Findings of Fact No. 13 and Mr. Hatch's testimony, Rec. pp. 83-85, 92-93.) Indeed, Mr. Hatch testified, and the trial court correctly found, that he gave a more favorable price to Dean Evans Corp. than would otherwise be given to a customer of that type (which had a smaller volume of business and which was not an electrical contractor), and did so as a favor to Mr. Sturgill. (See Findings of Fact No. 12 and Rec. pp. 87-88.)

These findings and evidence belie Dean Evans Corp.'s baseless assertions that there was "no evidence. . .

that the goods were furnished by defendant relying on the credit or the request of the defendant" and that City Electric was "actually relying upon the credit of Mr. Sturgill rather than the corporate defendant . . ." (Appellant's Brief, pp. 9, 10). (Mr. Sturgill, of course, was not personally billed, as he would have been if City Electric were somehow simply relying on his credit.)

The findings and record below establish that the first two invoices for the subject purchases, dated October 8, 1978 and October 9, 1978, were paid in December by defendant. (See Findings of Fact No. 14, Rec., p. 67.) Dean Evans Corp.'s contentions that "there is no reference whatsoever" that Dean Evans Corp. paid the invoices and that "the only permissible inference" was that "Johnny Rider and/or Mike Evans" paid for the items personally (Appellant's Brief, p. 8) are nothing more than grasping at straws. These conjectures are contradicted by the plain fact as to who was billed on these invoices, as shown by the invoices themselves, namely, Dean Evans Corp. Had Mike Evans or Mr. Rider personally paid these invoices, Dean Evans Corp. could easily have so proven at trial, but no evidence whatsoever to this effect was even offered.

ARGUMENT

I. THE APPLICABLE STANDARD OF REVIEW REQUIRES AFFIRMANCE OF THE JUDGMENT

As the court held in R.C. Tolman Construction Co. v. Myton Water Assoc., 563 P.2d 780 (Utah, 1977):

> In analyzing the [appellant's] contentions, it is appropriate to have in mind these basic rules of review on appeal: that we indulge the findings and judgment of the trial court with a presumption of validity and correctness; review the record in the light favorable to them; do not disturb them if they find substantial support in the evidence; and require [appellant] to sustain the burden of showing error. [Citing Charlton v. Hackett, 11 U.2d 389, 360 P.2d 176, and First Security Bank of Utah, N.A. v. Wright, 521 P.2d 563.]

563 P.2d at 782.

It is readily apparent from the foregoing review that the trial court's findings do indeed have "substantial support in the evidence" and that appellant Dean Evans Corp. has utterly failed to sustain its burden of showing error. (Dean Evans Corp. could have easily introduced evidence at trial in support of its contentions, if any such evidence were available, but it neither introduced any evidence nor called any witnesses.) The findings of the trial court are correct, and require affirmance of the judgment.

II. THE ORAL AGREEMENT FOR THE PURCHASE OF THE MATERIALS IS AN ORIGINAL OBLIGATION OF DEAN EVANS CORP.

The trial court found an employee of Dean Evans Corp. contacted City Electric with the authority of the corporation's day-to-day manager and director to arrange for the purchase of the subject materials to be charged to Dean Evans Corp.'s account. The purchase of the materials, therefore, constitutes an original agreement on the part of Dean Evans Corp. It is therefore not a promise to answer for the debt of another under the particular provision of the statute of frauds relied upon by Dean Evans Corp. (§25-5-4(2), Utah Code Ann.).

In addition, Dean Evans Corp.'s Statute of Frauds argument is contrary to the applicable authority of this court, even if it had no interest in the project where the materials were used. In Sugar v. Miller, 6 U.2d 433, 315 P.2d 862 (1957), a printing establishment had done work for a corporate entity at the request of the individual who was its principal owner and promoter, and the individual said that he would pay for the services performed for the corporate entity. The printer performed the services on the strength of the requesting individual's credit, just as City

Electric furnished the subject materials and supplies here on the strength of the requesting corporation's credit. The Court held that the promise was therefore an original promise and not within §25-5-4(2). The Court held:

> "Where goods are furnished to one person upon the credit and request of another, it is an original undertaking upon the part of the person making the request, and is not within the scope of the statute of frauds. (Citing cases.)
>
> "The law is well settled that a seller of goods may recover from another person on his oral promise to pay, through both title and possession of the goods were delivered to a person other than the one making the promise to pay, where the promise was given prior to the delivery and induced the seller to part with the goods".

315 P.2d at 865 [quoting Liebman v. Buell Lumber & Mfg. Co, 67 S.W.2d 1043, 1044 (Tex. Civ. App.), underlining supplied].

The trial court found that City Electric furnished the materials and extended credit on the strength of Dean Evans Corp.'s credit, and the purchases were charged to its account for that reason and at the request of its agents. Under Sugar v. Miller, therefore, the obligation was an

original obligation of Dean Evans Corp., and §25-5-4(2) is therefore inapplicable.

III. BOTH MIKE EVANS AND DAVID STURGILL HAD APPARENT AUTHORITY TO ACT ON BEHALF OF DEAN EVANS CORP.

Not only does the evidence in record demonstrate that Mike Evans and Mr. Sturgill had apparent authority to act on behalf of Dean Evans Corp., but there was also no evidence whatsoever introduced to demonstrate any lack of authority on their part to act on behalf of the corporation or that their acts were unauthorized.

The record below demonstrates that Mike Evans was acting as general manager at the time of the subject transactions. The acts of Mike Evans, and Mr. Sturgill acting on his behalf, as established in the record below are within Mike Evan's implied or apparent authority as the general manager of Dean Evans Corp. As stated by the court in Twisp Mining & Smelting Co. v. Chelan Mining Co., 16 Wash.2d 264, 133 P.2d 300 (1943):

> We have consistently held that where a corporation allows a person in a large measure to control its business transactions, the corporation must be held responsible for his acts in the name of the corporation, until it has been affirmatively shown that such acts were unauthorized. McKinley v. Mineral

> Hill Consolidated Mining Co., 46 Wash. 162, 89 P. 495.

133 P.2d at 312 [underlining supplied].

As this court stated in Sullivan v. Evans-Morris-Whitney Co., 54 U. 293, 180 P. 435 (1919):

> The term "manager", as applied to corporations and business concerns, is not unknown to the law. It has a comprehensive meaning which is generally understood:
>
> > "'Manager', as applied to an officer of a corporation, implies the idea that the management of the affairs of the company has been committed to him so that one dealing with a person so held out, before the company can be held liable for his acts, need not show affirmatively that it had authorized them."
>
> And again:
>
> > "'Manager', as applied to an officer of a corporation conveys the idea that to the one thus named has been committed the management of the affairs of the company, and one dealing with the person so held out may assume that his acts are authorized." 5 Words and Phrases, p. 4319.

180 P. at 438 [underlining supplied].

The Sullivan case dealt with the apparent authority of one who was a branch manager of one branch of a

stock brokerage business, and the principle stated applies to the acts of one who is in effect the general manager of an entire corporation, as was Mike Evans here.

Therefore, under the facts found by the trial court, Dean Evans Corp. is bound by the acts of Mike Evans and Mr. Sturgill, as the trial court correctly concluded.

IV. THE AGREEMENT FOR PURCHASE OF THE SUBJECT MATERIALS WAS RATIFIED BY DEAN EVANS CORP. BY SUBSEQUENT PAYMENT

The findings of fact of the trial court demonstrate that the first two invoices of the subject purchases of materials and supplies were paid in December, 1978 (after the vast majority, if not all, of the remaining deliveries reflected by the remaining invoices had been made).

Payments on corporate obligations incurred by officers who, according to the corporation, had no authority or power to do so were held to constitute a ratification in Cache Valley Banking Co.v. Logan Lodge No. 1453, BPOE, 88 U. 577, 56 P.2d 1046 (1936). See also, e.g., See-Tee Mining Corp. v. National Sales, Inc., 76 N.M. 677, 417 P.2d 810 (1966), and cases cited therein.

By payment of the first two invoices, Dean Evans Corp. ratified both the agreement for purchase of the materials and the acts of its general manager and employee.

CONCLUSION

The trial court's findings of fact are supported by the record in all respects and must be sustained under the applicable standard of review. The findings require affirmance of the judgment. The agreement for the purchase of the subject materials was an original obligation on the part of Dean Evans Corp. and §25-5-4(2), Utah Code Ann., is inapplicable. There is no evidence that the acts of Dean Evans Corp.'s agents were unauthorized. The trial court correctly ruled that Dean Evans Corp. is bound by the acts of its officers and agents within the apparent scope of their authority. In any event, the agreement, as well as the authority of Dean Evans Corp.'s agents, was ratified by payment of the first two invoices.

Respectfully submitted this 17 day of June, 1982.

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CERTIFICATE OF SERVICE

The foregoing Brief of Respondent was served upon defendant-appellant by mailing a true copy thereof to its attorney Nick J. Collesides, 610 East South Temple, Suite 202, Salt Lake City, Utah 84102, this 17 day of June, 1982.

Geoffrey Heath