1982

Richard W. Ringwood v. Foreign Auto Works Inc et al : Brief of Respondents

Utah Supreme Court

Robert C. Fillerup; Frederick A. Jackman; Attorneys for Respondents;
Nick J. Colessides; Attorney for Appellant;

IN THE SUPREME COURT

OF THE STATE OF UTAH

---oooOooo---

RICHARD W. RINGWOOD,

Plaintiff-Appellant,

vs.

Case No: 18249

FOREIGN AUTO WORKS, INC., a Utah corporation, MASSIMO C. POGGIO, REBECCA JANE POGGIO and HOWARD R. FRANCIS:

Defendants-Respondents.

---oooOooo---

BRIEF OF RESPONDENTS

APPEAL FROM THE JUDGMENT OF THE
DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
IN AND FOR UTAH COUNTY, STATE OF UTAH

Honorable Allen B. Sorensen, Judge

NICK J. COLESSIDES
Attorney for Plaintiff-Appellant
610 East South Temple, Suite 202
Salt Lake City, UT 84102
Telephone: (801) 521-4441

FREDERICK A. JACKMAN
PAUL JAMES TOSCANO
Attorneys for Howard Francis
1325 South 800 East, Suite 300
Orem, Ut 84057
Telephone: (801) 225-1632

ROBERT C. FILLERUP
Attorney for Defendant-Respondent
Foreign Auto Works & Poggio
1095 South 800 East
Orem, UT 84057
Telephone: (801) 226-0092

IN THE SUPREME COURT

OF THE STATE OF UTAH

---ooo0ooo---

RICHARD W. RINGWOOD, Plaintiff-Appellant,	:	
vs.	:	Case No: 18249
FOREIGN AUTO WORKS, INC., a Utah corporation, MASSIMO C. POGGIO, REBECCA JANE POGGIO and HOWARD R. FRANCIS: Defendants-Respondents.	:	

---ooo0ooo---

BRIEF OF RESPONDENTS

APPEAL FROM THE JUDGMENT OF THE
DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
IN AND FOR UTAH COUNTY, STATE OF UTAH

Honorable Allen B. Sorensen, Judge

NICK J. COLESSIDES
Attorney for Plaintiff-Appellant
610 East South Temple, Suite 202
Salt Lake City, UT 84102
Telephone: (801) 521-4441

FREDERICK A. JACKMAN
PAUL JAMES TOSCANO
Attorneys for Howard Francis
1325 South 800 East, Suite 300
Orem, Ut 84057
Telephone: (801) 225-1632

ROBERT C. FILLERUP
Attorney for Defendant-Respondent
Foreign Auto Works & Poggio
1095 South 800 East
Orem, UT 84057
Telephone: (801) 226-0092

TABLE OF CONTENTS

AUTHORITIES CITED

IN THE SUPREME COURT

OF THE STATE OF UTAH

---oooOooo---

RICHARD W. RINGWOOD,

Plaintiff-Appellant,

vs.

Case No: 18249

FOREIGN AUTO WORKS, INC., a Utah corporation, MASSIMO C. POGGIO, REBECCA JANE POGGIO and HOWARD R. FRANCIS:

Defendants-Respondents.

---oooOooo---

BRIEF OF RESPONDENTS

NATURE OF THE CASE

Plaintiff-appellant brought an action in the Fourth Judicial District Court, before the Honorable Allen B. Sorensen, Judge, to enforce the terms of a Promissory Note. At trial defendant-respondents proferred evidence that the Promissory Note was superseded by a later Agreement dated November, 8, 1978. Defendants also counterclaimed for damages.

DISPOSITION IN LOWER COURT

The trial court found that the November 8 Agreement did, in fact, supersede the Promissory Note and dismissed with prejudice

plaintiff-appellant's cause of action on that note. The court further found no cause of action on the defendant-respondent's counterclaim.

RELIEF SOUGHT ON APPEAL

Plaintiff-appellant seeks a reversal of the trial court's judgment in order to enforce the Promissory Note and to avoid having to bring a new action on the November 8 Agreement. Defendant-respondents' seek, of course, an affirmance of the trial court's judgment.

DEFENDANT-RESPONDENTS' STATEMENT OF FACTS

In defendant-respondents' view, the pertinent facts of this case are as follows:

1. In 1976, the plaintiff-appellant, Richard W. Ringwood (hereinafter either "Ringwood" or "plaintiff-appellant") was then owner of 19,250 shares of a Utah corporation called Richard Ringwood, Inc.

2. In 1976, one of the defendant-respondents Massimo Poggio, was a shareholder of the Utah corporation called Foreign Auto Works, Inc. (hereinafter "FAW"). Co-defendant-respondent, Howard Francis, was also a shareholder in Foreign Auto Works, Inc.

3. In 1976, Richard Ringwood, Inc. and FAW merged.

4. As a result of the merger, FAW became the survivor corporation in which Richard W. Ringwood claimed 15,000 shares.

5. In 1978, Richard W. Ringwood and Massimo Poggio (hereinafter "Poggio"), acting for FAW, entered into negotiations for the repurchase by FAW of Ringwood's 15,000 shares of stock.

6. A verbal understanding was reached between these parties and memorialized by an interim Promissory Note signed near the end of October, 1978, but back dated to October 1, of that year. This document appears in the Record on Appeal as Plaintiff's Exhibit 1.

7. Subsequent to the signing of this promissory note, the parties entered into a second agreement dated November 8, 1978 (herein referred to as the "November 8 Agreement"). This document appears in the Record on Appeal as Defendants' Exhibit 22.

8. The defendant-respondents introduced substantial and competent evidence at trial to show that the Promissory Note was an interim document that was superseded by the November 8 Agreement, which included most of the terms of the Promissory Note in addition to other terms relating to the total transaction between the parties. In this document, too, was included explicit language rendering the Promissory Note nugatory.

9. There was some vague testimony from Mr. Ringwood (see Trial Transcript, pp. 84-96) that he believed that the Promissory Note was part of the overall transaction. However, the defendant-respondents' version of the meaning of these documents (to-wit, that the November 8 Agreement superseded the Promissory Note) was largely uncontroverted.

10. The trial court, in its Memorandum Decision, found that the Promissory Note had, indeed, been superseded by the November 8 Agreement and based its Findings of Fact on the language of the agreement itself (Defendants' Exhibit 22 at paragraph 16 and 21), as well of the language of Glen Ellis, the negotiating attorney for the defendant-respondents at that time, as found in his letter to Nick J. Colessides, attorney for plaintiff-appellant (Plaintiff's Exhibit 2).

ARGUMENT

POINT I

THE TRIAL COURT DID NOT ERR AND DID NOT FAIL TO CONSTRUE ALL DOCUMENTS TOGETHER IN REACHING ITS DECISION.

Plaintiff-appellant is correct when he states that the "general rule is that, absent fraud, an apparently complete agreement is presumed to contain the whole agreement." He is also correct when he states that such a "presumption should be made only when it [the written agreement] is integrated, when it is adopted by the parties as their final and complete expression of agreement" (see Brief of Appellant, p. 3). The plaintiff-appellant is wrong, however, when he argues that the November 8 Agreement is not integrated, does not represent the whole agreement between the parties, and does not supersede and render nugatory the Promissory Note of October 1, 1978.

A. The November 8 Agreement is integrated.

The single evidence which plaintiff-appellant offers to support his contention that the November 8 Agreement is not integrated is Plaintiff's Exhibit 23, an Escrow Agreement. Plaintiff points to the fact that both the Promissory Note and the November 8 Agreement were attached to this Escrow Agreement and asserts that fact as probative of the parties' intent that both attachments be construed together, particularly since, one payment to the plaintiff-appellant was made by the defendant-respondents under the Promissory Note, even before the November 8 Agreement was executed.

There are several reasons why this argument is without merit. There is nothing in the Escrow Agreement that explains why the Promissory Note and the November 8 Agreement were attached or what the intention of the parties was with regard to their relationship to each other. The Escrow Agreement merely requires the defendant-respondents to make their payments according to the terms set forth in the Promissory Note, which were substanially the same as those set forth in the November 8 Agreement. What the Escrow Agreement does is incorporate by reference the terms of both attachments. Those terms speak for themselves.

Under the terms of the November 8 Agreement, the Promissory Note was rendered nugatory as indicated by the language found

in paragraph 16 thereof. Which language the trial court relied upon in its Memorandum Decision. Paragraph 16 provides:

> The parties herein have not made any representations, warranty, or covenant, not set forth herein and this agreement constitutes the entire agreement between the parties. All representations and warranties and agreement shall survive the date of this agreement.

If the last sentence of this paragraph is ambiguous, then that ambiguity was resolved by the trial court in favor of the defendant-respondents in light of the further provisions of paragraph 21 of the November 8 Agreement, which provides as follows:

> Seller [Ringwood] as an additional consideration for this agreement, waives any and all causes of action, rights or claims of any kind or nature against buyer corporation [FAW] or any of its shareholders, directors, or officers which accrued prior to the date hereof and agree to hold harmless from liability of any kind arising out of sellers acts while he was associated with the corporation. Seller further covenants that he has not made any commitment, obligation, mortgage, assignment or other conveyance of any corporate property, nor has he incured any obligation either against the corporation or its assets, nor has he obligated his 15,000 shares of corporate stock in any way. Seller agrees to defend against any claim set forth above and conveys his shares to the buyer, free and clear of any such adverse claim.

These paragraphs, taken together, spell legal doom for the Promissory Note of October 1. This view is bolstered by the extrinsic evidence properly considered by the trial court and found in Plaintiff's Exhibit 2 in the Record on Appeal. This document is a letter from Glen Ellis (defendant-respondents'

attorney who conducted the negotiations leading to the November 8 Agreement) to Nick J. Colessides, attorney for the plaintiff-appellant. At paragraph 3 that document reads as follows:

> The third thing is that the agreement should hold general hold-harmless provisions, both ways and language indicating that this agreement is a settlement of a dispute and that it is a settlement in full of all claims by either party against the other.

The court concluded that the November 8 Agreement was, integrated, that it represented the whole Agreement between the parties, that it was adopted by the parties as the final and complete expression of that Agreement. See Restatement, Contracts, §228.

Plaintiff-appellant contends that if the November 8 Agreement was integrated, then the defendant-respondents would not have made payments pursuant to the terms of the Promissory Note (see Defendants' Exhibit 17). The simple answer is that defendant-respondents did not make payments under the Promissory Note. They made payments pursuant to the terms of the November 8 Agreement. To this Massimo Poggio repeatedly testified at trial (see Trial Transcript, pp. 13-14, 26 and 27). The fact that the terms of both the interim Promissory Note and the integrated November 8 Agreement are, in substance, identical supports the position of the defendant-rsspondents that they were making payments under the November 8 Agreement as the complete and

final embodiment of their contract.

If a difference exists between the Promissory Note and the November 8 Agreement, it lies in the language setting forth the remedies available to the seller, Richard W. Ringwood. Under the Promissory Note, the usual remedies in the event of default are provided. In the November 8 Agreement, however, seller remedies in case of buyer default, provide that the money paid by seller "shall be deemed to have been paid, not as a penalty, but for an option to purchase stock which was not exercised, and the purchaser [FAW] shall have no claim whatsoever for such money or any part thereof, and further, seller [Ringwood] shall be free to pursue any other legal or equitable remedies available to the seller." Thus, with regard to Ringwood's remedies, the November 8 Agreement supersedes and subsumes the remedies made available to him in the interim Promissory Note; and furthermore, the November 8 Agreement adds the additional stock option language to the tranasaction. All this is mentioned here to clarify that the defendant-respondents made their payments pursuant to the terms of the integrated Agreement of November 8, which subsumed and superseded those of the Promissory Note.

B. Since the November 8 agreement was integrated did give effect to the parties intent by finding the promissory note had been superseded.

Plaintiff-appellant argues that the trial erred by failing to construe all the pertinent documents together in arriving at its decision.

But this contention is untrue. The trial court had the documents before it and came to the conclusion that the Promissory Note had been invalidated. The court implied that it believed defendant-respondents' argument that the Promissory Note constituted a "interim" document calculated to maintain the status quo until the final and superseding agreement could be executed by the parties.

In order to disturb this finding of fact, the plaintiff-appellant cites a number of authorities all of which can be distinguished from the case at bar:

1. Eie v. St. Benedicts Hospital, 638 P.2d 1190 (Utah 1981). This case involved an interim letter agreement between a hospital and some paramedics. Paramedical services were to be rendered and payment made therefor pursuant to this letter agreement until a final contract was executed. The final contract never materialized.

This case is cited by the plaintiff-appellant for the proposition that "absent fraud, an apparently complete agreement is presumed to contain the whole agreement." This is true. But the case could also be cited for the proposition that whenever it is clear that an agreement is only an interim agreement, then the final agreement, if it exists, must be given effect as an integrated document.

In the Eie case the interim agreement contained express language contemplating a later agreement that was never forthcoming.

Therefore, the court declared that this interim agreement was not integrated and gave effect to the parties' intent as established at trial by extrinsic evidence.

However, in the case at bar, the interim Promissory Note was actually followed by the November 8 Agreement, containing language rendering the Promissory Note nugatory. This presents an entirely different fact situation from that in the Eie case. Here the parties have, not an interim agreement, but a final, integrated one, which, unlike the situtation in Eie, must be interpreted without resort to extrinsic evidence.

2. Bullfrog Marina, Inc. v. Lentz, 28 Ut. 2d 261, 501, P.2d 266 (1973). In this case, the lower court found, and the Supreme Court affirmed, that a lease for houseboats and an accompanying employment agreement constituted an integrated agreement because the "defendant would not have leased the housebouts to plaintiff unless he could operate the houseboat rental services." Id. at 270. In other words, the lease and the employment agreement covered different aspects of a single transaction between the same parties.

This is not like the facts in the present case. The November 8 Agreement does not cover a different aspect of the same transaction set forth in the Promissory Note. On the contrary, the November 8 Agreement substantially includes, and adds to the terms of the Note. In the Bullfrog case, both the lease and the employment

contract were necessary to frame the whole intended transaction of the parties. But in this case, the whole transaction is set forth in the one, final, and integrated agreement.

3. Strike v. White, 91 Utah 170, 63 P.2d 600 (1936). In this case, a buyer purchased an amusement park under a contract which provided that the seller would pay "all obligations and liabilities of every kind and nature that were outstanding against the music company and the Star Theatre at the time the contract was executed." Id. at 602. At the time of the sale, the amusement park owed the electric company $508.00; this amount was for future services. At trial the seller introduced a bill of sale that contained terms at variance with the sales contract; it stated that the purchaser would "assume to pay all future rentals for services in connection with the sound equipment contract" with the electric company. Id. at 601. The bill of sale was not signed by the purchaser. The Supreme Court held that the original sales contract was integrated and that the subsequent bill of sale could not be construed together to alter the terms of the sales contract without the introduction of parol evidence in violation of the parol evidence rule.

Apparently, plaintiff-appellant cites this case for the proposition that "another well-established rule of law is that where two or more instruments are executed as part of one transaction, such instruments should, when possible, be construed together"

(see Brief of Appellant, p. 5). But defendant-respondents do not contest this rule of law. They contest only its application to the circumstances of the case at bar where there do not exist two contracts comprising one transaction, but where there is one transaction evidenced by the single integrated agreement, Furthermore, in Strike, the two documents were at variance and the court refused to give credence to the bill of sale because it had not been signed by both parties. In the present case, the two documents in question are not at variance (the November 8 Agreement contains all the substantial provisions of the Promissory Note and more) and, furthermore, both documents are signed. The two cases are inapposite.

4. Peck & Sons, Inc. v. Lee Rock Products, Inc., 30 Utah 2d. 187, 515 P.2d 446 (1973). In this case, the Lee Products proposed a lease to Peck & Sons. The lease was unacceptable, so the parties negotiated and finally agreed to an "added option." Later, Lee contended that the lease was a separate transaction to be viewed independently of the terms of the "added option." Peck argued that the two documents constituted a single integrated contract to be viewed together by the court. The court held that the documents were to be construed together.

The plaintiff-appellant cites this case for the proposition that "the meaning and effect to be given a contract depends upon

the intent of the parties; and that this is to be ascertained by looking at the entire contract and all of its parts in their relationship to each other . . . ." (Brief of Appellant, p. 5). But the Peck case bears only a superficial resemblance to the case at bar. The argument in both cases is over two documents and whether they should be construed together or whether one should be found to be integrated and to express the complete and final agreement between the parties without reference to the other. But here the similarity between the Peck case and the present case ends. For in Peck the lease and the "added option" set forth different terms that had to be construed together to make commercial sense. But in the case at bar, the November 8 Agreement embodies the Promissory Note's terms and makes commercial sense on its own. Plaintiff-appellant could have sued under the November 8 Agreement, but instead, inadvertently sued under the invalid Promissory Note which no longer had legal effect.

5. Driggs v. Utah State Teachers Retirement Board, 105 Utah 417, 142 P.2d 657 (1943). This case is cited by plaintiff-appellant for the proposition that contracts should be construed so as to make sense. With this proposition the defendant-respondents have no argument.

6. Maw v. Noble, 10 Utah 2d 440, 354 P.2d 121 (1960). This case is cited by the plaintiff-appellant for the proposition that any uncertainty in a contract must be resolved in light of

the parties' intent. Defendant-respondents do not contest this proposition either. What they do contest are plaintiff-appellant's factual assertions, made on appeal, which were rejected by the trial court on the basis of substantial competent evidence, supporting the defendant-respondents position.

None of the cases cited by the plaintiff-appellant provide any authority whatsoever for his contention that the trial court's findings should be disturbed on appeal. (See Point III, infra); Nor do these cases support his contention that, under the circumstances of this case and the evidence in the record, the November 8 Agreement can not, either in law or fact, be found to be an integrated agreement, superseding the Promissory Note of October 1.

However, there is ample law in this jurisdiction to support the defendant-respondents' proposition that the parties could enter into an interim Promissory Note and then, finalizing their negotiations, waive the Promissory Note, and enter into a final integrated agreement. See PLC Landscape Construction v. Piccadilly Fish N Chips, Inc., 28 Utah 2d 350, 502 P.2d 562 (1972); Cheney v. Rucker, 14 Utah 2d 205, 381 P.2d 86 (1963); Dillman v. Massey Ferguson, Inc., 13 Utah 2d 142, 369 P.2d 296 (1962); Prince v. R.C. Tolman Construction Co., Inc., 610 P.2d 1267 (Utah 1980).

And it has been generally held that where parties engage in negotiations concerning a transaction, pursuant to which they

enter into a written contract, it is presumed that all matters relating to the subject matter of their agreement are merged in and constituted a complete integration of their agreement. National Sur. Corp. v. Christiansen Bros., Inc., 29 Utah 2d. 460, 511, P.2d. 731 (1973); see also Rapp v. Mountain States Tel. & Tel., Co., 606 P.2d 1189 (Utah 1980).

Therefore, in arriving at its decision, the trial court relied both upon substantial evidence and sound legal principles.

POINT II

THE NOVEMBER 8 AGREEMENT IS A NOVATION

Plaintiff-appellant cites the case of Cooke v. McAdoo, 85 N.J.L. 692, 90 A. 302 (1914) for the proposition that "a novation is a substituted contract and implies the elimination of an existing debt or obligation and its transition into a new one between the same or other parties" (see Brief of Appellant, p. 6). Plaintiff-appellant concludes that pursuant to this rule, the November 8 Agreement was not a novation of a Promissory Note of October 1.

Defendant-respondents vigorously disagree with this conclusion. The November 8 Agreement was clearly a substitution of the promissory note; and, equally clearly, it extinguished the existing debt, evidenced by the interim note, and created a transition to a new debt (on substantially the same terms) between the same parties. A novation could not be clearer from the facts or more soundly based in law.

For example, in Nelson v. Newman, 538 P.2d 601(Utah 1978) the Supreme Court affirmed the trial court's finding of novation, where a series of 57 promissory notes (representing monthly installments due and owing) extinguished the parties rights under a previous contract.

In Nicholson v. Hardwick, 49 Or.App. 169, 619 P.2d 925 (1980), the Oregon Supreme Court held that "when parties to a contract execute a subsequent agreement respecting the same matter and the second contract is inconsistent in some of its terms with the first, the second agreement is deemed to have superseded the prior contract [citations omitted]." This is like the case at bar, where the language of paragraphs 16 and 21 of the November 8 Agreement are inconsistent with the rights of the parties under the Promissory Note.

Winkleman v. Oregon-Washington Plywood Co., 240 Ore. 1, 399 P.2d 402 (1965) is a case where a vendor and a purchasor entered into a second contract which provided for the cancellation of a prior agreement and for a certain sum, previously paid, to be applied in settlement of damages under the prior agreement. The Oregon Supreme Court held that it was the intent of the parties to terminate completely their rights under the first contract upon signing of the second, and a second contract was a substituted contract which replaced the first one.

In Hanover Ltd. v. Fields, 568 P.2d 751 (Utah 1977), the parties entered into an Earnest Money Agreement and Offer to Purchase and then, that transaction having failed for lack of financing, they entered into a second such agreement. The Supreme Court held that:

> "it appears perfectly logical and reasonable for the trial court to determine that since the initial contract had failed to produce the mutual desired result that a new approach, through a different contractual arrangement, was agreed upon and in turn substituted for and became integrated therewith." Id. at 753

These four cases, Nelson, Nicholson, Winkleman, and Hanover, all support defendant-respondents' contention that a novation occurred.

Plaintiff-appellant cites Elliot v. Whitney, 215 Kan. 256, 524 P.2d 704 (1974) for the proposition that in order for there to be a novation, the "new contract must be so radically different from the old that it necessarily supersedes the old" (See Brief of Appellant, pp. 6 and 7). But this is not what the Elliot case holds. The Kansas Supreme Court, in Elliot, was addressing itself not to the issue of novation, but to the issue of intention to create a novation: How does a finder of fact determine if a novation was intended by the parties when there exists no explicit language to that effect? The Elliot court cited "C.J.S., Novation, paragraph 11b (1), pp. 692-93:

> While . . . . the intention to accomplish a novation need not be by express agreement to that effect, but

> may be inferred, like any other contract, from the facts, circumstances, and conduct of the parties, in order for a subsequent contract to constitute a novation and discharge of a prior one by implied intention of the parties, ordinarily it must appear that the new contract is so radically different from the old one that it necessarily supersedes it as an entirety.

In other words, in a situation where there is no explicit language and one must find a novation from the acts of the parties under those circumstances, "ordinarily it must appear that the new contract is so radically different from the old one that it necessarily supersedes it as an entirety." Having said as much, the Elliot court went on to find that a novation existed between the parties in that case because the new contract contained the following explicit language:

> Each of the parties hereby releases and obsolves the other from any and all liability arising out of any business association or agreement heretofore made between the parties. Id. at 704.

The Elliot court concluded that, "the plain and ordinary meanin of the term 'hereby' as used above can only be 'by or through t document' or 'by means of this document' . . . . the intent expressed therein must discharge all prior obligations upon execu of the written agreement . . . ." Id. at 704.

In the present case, the November 8 Agreement contained similar language at paragraphs 16 and 21. This language, in th words of the Elliot court, "clearly evidenced the parties inten thereby to settle and adjust all disputes existing between them

and it must be upheld." Id. at 704.

This conclusion applies equally well to the case at bar where, as evidence by paragraph 3 of the Plaintiff's Exhibit 2 in the Record on Appeal, the parties intended that the November 8 Agreement be a settlement of all previous disputes and a discharge of all previous obligations. See Robinson v. Hansen, 594 P.2d 867 (Utah 1979); and United Security Corp. v. Anderson Aviation Sales Co., 23 Ariz.App. 273, 532 P.2d. 545 (1975).

The language of the November 8 Agreement, itself, and the other evidence relied upon by the trial court supports the finding that the November 8 Agreement was to be a novation of the Promissory Note of October 1, completely replacing that Note as the underlying legal basis for the transaction between the parties. All the elements of novation have been met: There was (1) previous valid agreement in the form of a Promissory Note, (2) a subsequent valid "new" Agreement involving all the parties to the old one, and (3) the extinguishment of the old obligation under the Promissory Note. See Food Health Co., Inc. v. 3839 Joint Venture, 129 Ariz. 103, 628 P.2d 986 (1981).

There is no basis, then, in the facts of this case or in the law of novation for the disturbing of the trial court's finding that the November 8 Agreement superseded and replaced the Promissory Note.

POINT III

THIS COURT SHOULD NOT DISTURB THE FINDINGS OF THE TRIAL COURT

The question of whether or not a written contract is integrated is a question for the trier of fact. Youngren v. John W. Lloyd Constr. Co., 22 Utah 2d 207, 450 P.2d 985 (1969).

This court has held that the Supreme Court cannot reverse a trial court on appeal on the facts of a law case, but can only reverse if there be an error of law. Brigham v. Moon Lake Electric Association, 24 Utah 2d 292, 470 P.2d. 393 (1970).

The question of whether or not a trial court based its finding of fact on a sufficiency of evidence is a question of law for the Supreme Court to determine. Coronado Mining Corp. v. Marathon Oil Co., 577 P.2d. 957 (Utah 1978).

Clearly, this is not a suit in equity in which the Supreme Court can make its own fact findings. Hatch v. Bastian, 567 P.2d 1100 (Utah 1977); though, even in such equity cases, the Supreme Court defers to the trial court in fact findings. See Corbet v. Corbet, 24 Utah 2d 378, 472 P.2d 430 (1970); Brady v. Fausett, 546 P.2d 246 (Utah 1976); Pagano v. Walker, 539 P.2d 452 (Utah 1975); Nelson v. Nelson, 513 P.2d 1011 (Utah 1973); Chevron Oil Co. v. Beaver County, 449 P.2d. 989 (Utah 1969); Stone v. Stone, 431 P.2d 809 (Utah 1967); Build, Inc. v. Italason, 398 P.2d 544 (Utah 1965).

In making a determination as to the sufficiency of evidence underlying a trial court's findings of fact in the law case, the

Supreme Court will accord considerable difference to the judgement of the trial court due to its advantage position and will not disturb the action of the trial court unless the evidence clearly purponderates to the contrary or the trial court abuses its discretion or misapplies principals of law. Ute-Cal Land Development v. Intermountain Stock Exchange, 628 P.2d 1278 (Utah 1981).

Moreover, in a situation where a trial judge, sitting as a trier of fact, makes a specific finding of fact on apparently conflicting or actually conflicting evidence, the Appellate Court should concern itself only with the evidence that supports the trial court's findings and not the evidence that might have supported contrary findings. See Matter of Philips Estate, 4 Kan.App.2d 256, 604 P.2d 747 (1980); See also In Re Marriage of Morrison, 26 Wash.App. 571, 613 P.2d 557 (1980).

In this case the Supreme Court should accord to the trial court considerable difference and review only that evidence which supports the trial court's finding (i.e. Defendants' Exhibit 22, especially paragraphs 16 and 21 therein, Plaintiff's Exhibit 1, Plaintiff's Exhibit 2 paragraph 3).

In fact, the court should only disturb the trial court's finding in this case if the evidence to the contrary is so clear and persuasive that all reasonable minds would find the other way.

Hall v. Anderson, 562 P.2d 1250 (Utah 1977); Centurian Corp. v. Fiberchem, Inc., 562 P.2d 1252 (Utah 1977); DeBry & Hilton Travel Services, Inc. v. Capitol Intern. Airways, Inc., 555 P.2d 874 (Utah, 1976); Nuhn v. Broadbent, 29 Utah 2d 198, 507 P.2d. 371 (1973); Erickson v. Bennion, 28 Utah 2d 371, 503 P.2d 139 (1973); Park v. Alta Ditch & Canal Co., 23 Utah 2d 86, 458 P.2d 625 (1973).

If the Supreme Court finds on review, that the findings and judgment of the lower court are sustained by any substantial evidence and reasonable inferences drawn therefrom, the trial court's finding will be affirmed. Jensen v. Eddy, 30 Utah 2d 154 514 P.2d 1142 (1973); Olsen v. Park Daughters Inv. Co., 29 Utah 2d 421, 511 P.2d 145 (1973); Movie Films, Inc. v. First Sec. Bank of Utah, N.A., 22 Utah 2d 1, 447 P.2d 38 (1968); Hanley v. Hales, 17 Utah 2d 344, 411 P.2d 836 (1966).

Thus the burden on plaintiff-appellant is very heavy. For him to prevail, he must show that, on review of the record, all minds would construe the evidence therein contrary to the finding of the trial court -- a burden that plaintiff-appellant cannot possibly meet in light of Plaintiff's Exhibits 1 and 2 and Defendants' Exhibit 22 herein. However, the burden on the defendant-respondents is very light. For if there is any substantial competent evidence to support the trial court's finding, those findings must not be disturbed. See Valley Bank and Trust Co. v. First Security Bank of Utah, N.A., 538 P.2d 298 (1975); Wash-a-Matic, Inc. v. Rupp, 532 P.2d 682 (1975); First Sec. Bank of Utah, N.A. v. Hall, 29 Utah 2d 24, 504 P.2d 995 (1972); Elton v. Utah State

Retirement Bd., 28 Utah 2d 368, 503 P.2d 137 (1972); Robertson v. Hutchinson, 560 P.2d 1110 (1977); Martin v. Martin, 29 Utah 2d 413, 510 P.2d 1102 (1973); Phillips Mfg. Co. v. Putman, 29 Utah 2d 69, 504 P.2d 1376 (1973); Dockstader v. Walker, 29 Utah 2d, 370, 510 P.2d 526 (1973); Nance v. City of Provo, 29 Utah 2d 340, 509 P.2d 365 (1973); Parker v. Telegift Intern, Inc., 29 Utah 2d 87, 505 P.2d 301 (1973); Branch v. Western Factors, Inc., 28 Utah 2d 361, 502 P.2d 570 (1972); Schlueter v. Summit County, Town of Kamas, 25 Utah 2d 257, 480 P.2d 140 (1971); Lynch v. McDonald, 12 Utah 2d 427, 367 P.2d 464 (1962).

This is true even in a case where the interpretation of the parties agreement becomes a question of fact. International Engineering Co., Inc. v. Daum Industries, Inc., 102 Idaho 363, 630 P.2d 155 (1981); Supra-valu Stores, Inc. v. Loveless, 5 Wash.App. 551, 489 P.2d 368 (1971); Coldiron v. McKenzie, 260 Or. 237, 490 P.2d 976 (1971); Coonrod & Waly Const. Co., Inc. v. Motel Enterprises, Inc., 217 Kan. 63, 535 P.2d 971 (1975); Glenn Dick Equipment Co. v. Galey Const. Inc., 97 Idaho 216, 541 P.2d 1184 (1975); Fundingsland v. Schmidt, 493 P.2d 689 (Colo. 1971).

And it is particularly true, as in this case, where the trial court predicated its findings on documentary evidence. Haywood v. Gill, 400 P.2d 16, 16 Utah 2d 299 (1965).

In situations where the evidence is contradictory, the trial court's findings will not be disturbed even in a contracts case. Staples Excavation & Erection Co. v. Weyher Constr. Co., 26 Utah 2d 387, 490 P.2d 330 (1971); Harrop v. Harward, 565 P.2d 70 (Utah 1977); DeVas v. Noble, 13 Utah 2d 133, 369 P.2d 290, cert. denied, 371 U.S. 821, 83 S.Ct. 37, 9 L.ed. 2d 61.

CONCLUSION

The record on appeal supports the defendant-respondents' position that the trial court's findings that the fact conclusions of law, to-wit: that the November 8 Agreement was integrated, that it was superceded by the Promissory Note, and that the plaintiff-appellant had no cause of action on said note. Furthermore, the law of this jurisdiction, as overwhelmingly demonstrated in this brief, amply sustains the defendant-respondents' argument that this court, in light of the substantial, competent evidence upon which the finder of fact based his findings, conclusions and decision, should affirm the judgment of the lower court.

DATED this 17th day of August, 1982.

JACKMAN & ASSOCIATES

PAUL JAMES TOSCANO
Attorney for Defendant-Respondent
Howard Francis

ROBERT C. FILLERUP
Attorney for Defendant-Respondent
Foreign Auto Works & Poggio

MAILING CERTIFICATE

MAILED a true and correct copy of the foregoing to:

Nick J. Colessides
Attorney for Plaintiff-Appellant
610 East South Temple, Suite 202
Salt Lake City, UT 84102

postage prepaid ~~this~~ 17 day of August, 1982.