2011

Deron Brunson v. The Bank of New York Mellon : Reply Brief

Utah Court of Appeals

Darren K. Nelson, Michael D. Black; John P. Snow; Parr Brown Gee and Loveless; Thomas T. Billings, Mary Jane Galvin-Wagg; Kelley M. Marsden; Van Cott, Bagley, Cornwall and McCarthy, P.C.; Attorney for Defendants/Appellees.
Deron Brunson; Plaintiff/ Appellant pro se.

IN THE UTAH COURT OF APPEALS

DERON BRUNSON, Plaintiff and Appellant, Vs. THE BANK OF NEW YORK MELLON, et al., Defendants and Appellees.	Appellate Case No. 20110854

REPLY BRIEF OF APPELLANT IN RESPOSE TO ALL THE APPELLEES

Darren K. Nelson, Michael D. Black
John P Snow
Parr Brown Gee & Loveless
185 south State St., Suite 800
Salt Lake City, UT 84111

Thomas T. Billings, Mary Jane Galvin-Wagg
Kelley M. Marsden
Van Cott, Bagley, Cornwall & McCarthy, P.C.
36 South State Street, Suite 1900
Salt Lake City, UT 84111

Attorney for Defendants/Apppellees

Deron Brunson
138 East 12300 South #C-1
Draper, UT 84020

Plaintiff/Appellant pro se

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Attorney for Defendants/Apppellees

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ARGUMENT

A brief synopsis of Appellant's Verified Complaint fosters the argument that despite the fact that Appellant took out a loan, the loan has been legally satisfied by entities that cannot be indentified whereupon the originators or alleged assignees of the loan have no right to collect any sums of money from Appellant. Collecting any money from Appellant would be unjust enrichment for them in addition to it being an act of fraud against Appellant by Appellees who have skirted around the law to make it appear that they legally own the loan when they do not. This is the basic merit of this case whereupon the Appellees have been successful in using every tactical persuasion to get the court to rule against Appellant in order that they may keep him from reaching discovery whereby he would prove his claims.

Appellees lean towards the court's equity powers to look to and interpret the merits of Appellant's Complaint under the light that Appellant should not be allowed to get away with the obligation to pay back a loan. This point of view allows the originators of the loan to get away with collecting the full aggregate amount of the loan, which is close to three times the amount that was loaned out, it allows them to get away with fraudulent robo signing of foreclosure documents, assignments, and it puts them above the law which requires the filing of certain instruments to be filed in the Salt Lake County Recorders Office securing legal interest in real property. It also puts them above the IRS and the SEC. It also allows them to be unjustly enriched and to fraud investors both over seas and here in the United States. The type of destruction their actions causes is unreal. For these reasons and others Appellees do not want this to be discovered which would come to light if Appellant wins this appeal.

Appellees did not overcome the legal authorities found in Appellant's opening brief. In further support of Appellant's legal authorities we turn to the Supremacy Clause of the United States Constitution Article VI clause 2 which states:

> "This Constitution which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or laws of any State to the Contrary notwithstanding."

This points out that all courts of law are all bound by the United Stated Constitution. Amendment IX of the United States Constitution states:

> "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

This points out that no law, no court or court room procedure, no supreme court justice have the right to construe with my rights. And what are these rights that a person holds? To answer that question we turn to the Declaration of Independence paragraph 2 which states:

> "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.- - That to secure these rights, Governments are instituted among Men . . ."

This points out that our Government was created to secure our rights, not give them. The Utah State Supreme Court supports this fact, in *American Bush v. City Of South Salt Lake,* 2006 Ut 40 140 P.3d.1235 it states ". . . In considering State constitutions we must not commit the mistake of supposing that, because individual rights are guarded and protected by them, they must also be considered as owing their origin to them. These instruments measure the powers of the rulers, but they do not measure the rights of the governed. . . . [A state constitution] is not the beginning of a community, nor the origin of private rights; it is not the fountain of law, nor the

incipient state of government; it is not the cause, but consequence, of personal and political freedom; **it grants no rights to the people**, but is the creature of their power, the instrument of their convenience. Designed for their protection in the enjoyment of the **rights and powers which they possessed before the constitution was made,** it is but the framework of the political government, and necessarily based upon the pre-existing condition of laws, rights, habits, and modes of thought. There is nothing primitive in it: it is all derived from a known source. It presupposes an organized society, law, order, property, personal freedom, a love of political liberty, and enough of cultivated intelligence to know how to guard it against the encroachments of tyranny." (Bold emphasis added)

In securing the structure of our Government to protect our rights, it is self evident that the right of due process comes into play which is a self evident right. "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Huish v. Munro*, 2008 UT App 283 191 P.3d 1242. And ""[T]imely and adequate notice and an opportunity to be heard in a meaningful way are at the very heart of procedural fairness." *In re Worthen,* 926 P.2d at 876 (quotations, citations, and footnote omitted). " . . .every person who brings a claim in a court or at a hearing held before an administrative agency has a due process right to receive a fair trial in front of a fair tribunal." *Id.* (quotations and citations omitted)". *Brent Brown Dealerships v. Tax Com'n, Myed*, 2006 UT App 261. And pursuant to the Utah State Constitution Article I §11 it states: "All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred

from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party."

Pursuant to the above stated legal authorities and specifically the supremacy clause and those mentioned in Appellant's opening brief, and in conjunction with the above stated 9th Amendment, no court at anytime has the right to deny Appellant due process because due process is a right that is fundamental in maintaining and in protecting ones unalienable right of ownership of properly, his life and his liberty. Without the protection of due process it would be easier to use the courts as a tool to take property one form another which would violate ones unalienable rights, this is contrary towards the purpose of our courts. How can justice reign in our courts if due process is not protected? It cannot.

Appellees bring forth cases that deal with summary judgment motions because they could not find any legal theories as it relates to this case on a motion to dismiss. Appellees do not cite any legal authority arguing against the fact that Appellant was denied his right to due process by being denied his right to be heard in opposition to Appellees' motion to dismiss. What Appellees cite are summary judgment citations that support strict enforcement of the rules.

> "Summary judgment procedure is generally considered a drastic remedy, requiring strict compliance with the rule authorizing it. *Parmelee v. Chicago Eye Shield Co.*, 157 F.2d 582, 168 A.L.R. 1130 (8th Cir. 1946). In *Lazar v. Allen*, 347 So.2d 457 (Fla.Dist.Ct.App. 1977), the court stressed the importance of "scrupulously observing the notice requirements" prior to entering summary judgment. The Florida Supreme Court has observed: If the [requirements of the rules] are not fulfilled, both in letter and spirit, the summary judgment procedure may become a vehicle of injustice rather than a salutary medium of reaching a swift but just result on a pure matter of law, as intended by the framers of the rules. . . a motion for summary judgment filed on the day of trial was not timely." *Timm v. Dewsnup*, 851 P.2d 1178, 1181 (Utah 1993).

Appellees also argue that Appellant filed certain lawsuits which were dismissed by a motion to dismiss. It is very important to note that a motion to dismiss pursuant to Utah Rules of Civil Procedure 12(b)(6) is not an opportunity for trial courts to decide the merits of a case.

> "A rule 12(b)(6) motion to dismiss is not an opportunity for the trial court to decide the merits of a case[.]" Tuttle v. Olds, ¶, 155 P.3d 893. Instead, "Rule 12(b)(6) concerns the sufficiency of the pleadings[.]" *Alvarez v. Galetka*, 933 P.2d 987, 989 (Utah 1997). For example, a rule 12(b)(6) dismissal is proper when a plaintiff has sued for negligence but there is no possibility from the facts alleged that a legal duty of care was owed by defendant to plaintiff. See Tuttle, 2007 UT App 10, ¶ 14. In summary, a rule 12(b)(6) motion places into issue only "`the sufficiency of the pleadings, [and] not the underlying merits of [the] case,'" *Oakwood Vill., LLC v. Albertsons, Inc.*, 2004 UT 101, ¶ 8, 104 P.3d 1226 (quoting Page 4 Alvarez, 933 P.2d at 989) (alterations in original), and the trial court may only consider the allegations in the pleadings themselves, see id. ¶ 12." *Ashby v. Ashby*, 2008 UT App 254 ¶ 8

> "A rule 12(b)(6) motion to dismiss addresses only the sufficiency of the pleadings, and therefore, "is not an opportunity for the trial court to decide the merits of the case." *Tuttle v. Olds*, 2007 UT App 10, ¶ 14, 155 P 3d 893." See *Williams v. Bench*, 2008 UT App 306193 P.3d 640

> *Puttuck v. Gendron*, 2008 UT App 362 "A rule 12(b)(6) dismissal is merely a recognition by a trial court that a plaintiff's claim for relief is formally deficient." Cazares v. Cosby, 2003 UT 3. ¶ 14. 65 P..3d 184. The trial court is limited therefore to considering the facts alleged in the pleading itself rather than factual determinations from prior proceedings. See id. ¶ 15 (holding that it was inappropriate for the trial court to "appl[y] its own findings of fact from the [prior] evidentiary hearing to resolve any doubts about the evidence" and thereby "concludeG? that [the plaintiff] could not prevail") "If, on a motion [to dismiss] . . . matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment . . . and all parties shall be given reasonable opportunity to present all material pertinent to such a motion . . . ." Utah R. Civ. P. 12(b)."

Again, Appellees cited cases involving Appellant that were dismissed by a motion to dismiss. The merits of the case by law were never tried, nevertheless Appellees were fraudulently able to obtain dismissal under issue and claim preclusion which by law cannot be

obtained. Issue and claim preclusions can only be obtained when the merits of the case were fully and fairly tried.

> ". . .in alleging by law that in order for them to be protected by claim preclusion they must demonstrate Plaintiff was given the capacity to present his entire controversy, and that the claim to be barred must have been brought or have been available in the first action, and that the first action must have produced a final judgment on the merits of the claim. See *D.U. Co. v. Jenkins*, 216 P 3d, 360, 365. (Underline emphasis added)

By law a motion to dismiss does not try the merits which must happen in order for issue and claim preclusion to survive. Nevertheless Appellees were able to rely on the equity power of the court to circumvent the law in order to get a court ruling in their behalf for issue and claim preclusion, thus forbidding Appellee from reaching discovery to prove his claims. The courts equity powers are being used for protection by Appellees. The court only sees one thing 'you cannot get away from paying on a loan' which is unjust. This puts Appellees above the law which has made them free to notarize robo signing of documents filed in the county recorder's office, and to sell their loan to purchasers that cannot be legally indentified for three times the amount loaned, and to avoid all local and state filing fees, and to avoid the law protecting the ownership of property, and to avoid federal taxes on the sale of the loan over and over again, and to continue to collect money from the original borrower or take his property. Appellees have clearly and successfully demonstrated thus far against Appellant that they are above the law as long as they can claim that Appellant must pay on the loan or loose his home— end of story! To this end the court[s] have thus far supported Appellees upon which Appellee continues to look for this support. Therefore the citations by Appellees that involve Appellant should be disregarded pursuant to the case of *American Bush*, the 9th Amendment of the United States Constitution and the case of *State Ex Rel. Z.C.*, 2007 UT 54 which states:

> " [A]nd if there arise out of [the acts of parliament] collaterally any absurd consequences, manifestly contradictory to common reason, they are, with regard to those collateral consequences, void. I lay down the rule with these restrictions; though I know it is generally laid down more largely, that acts of parliament contrary to reason are void. But if the parliament will positively enact a thing to be done which is unreasonable, I know of no power that can control it: and the examples usually alleged in support of this sense of the rule do none of them prove, that where the main object of a statute is unreasonable the judges are at liberty to reject it; for that were to set the judicial power above that of the legislature, which would be subversive of all government. But where some collateral matter arises out of the general words, and happens to be unreasonable; there the judges are in decency to conclude that this consequence was not foreseen by the parliament, and therefore they are at liberty to expound the statute by equity, and only quoad hoc disregard it."

Referring back to the summary judgment citations of Appellees, each of the parties in those cases had received copies of such motions before any hearing was conducted. Appellant never received a copy of Appellees motion to dismiss before the hearing, nor did Appellant understand or was told that the hearing was being decided on Appellees' motion to dismiss, Appellant thought he was there on a hearing for his Temporary Restraining Order.

Denying one the right to respond in opposition is prejudicial in nature; for how does a court absolutely know what facts or material issues can be raised in opposition? No matter how great and strong a moving party has with their motion, unless a party in opposition is allowed to exercise his right to respond, it would be gross negligence and prejudicial to assume the opposing party could not produce issues necessary to deny a moving party's motion. What Appellees promote to satisfy their claim is prejudicial against Appellant, not justice. However if the issue were against them they would scream perhaps the same issues Appellant has raised.

CONCLUSION

The trial court erred in denying Appellants his due process right to be heard in opposition. The Supremacy Clause, the 9th amendment along with the other above cited legal

authorities do not give power to any court at any time to deny Appellants due process right to be heard in opposition, and Appellees did not overcome the legal authorities that support Appellants claims. Therefore Appellant moves this court to grant this appeal by ordering Appellees to answer Appellants Verified Complaint.

Dated this the 11th Day of June, 2012.

Deron Brunson, pro se

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of June, 2012 I caused to be mailed, via US Mail, postage prepaid, to the parties named below, a true and correct copy REPLY BRIEF OF APPELLANT IN RESPOSE TO ALL THE APPELLEES.

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John P Snow
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