

1958

Wyoming Uranium Company v. James E. Reed : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT
of the
STATE OF UTAH

WYOMING URANIUM COMPANY,
Plaintiff and Respondent,

vs.

JAMES E. REED,
*Defendant Counter-claimant and
and Appellant.*

Case No.
8757

BRIEF OF APPELLANT

GEORGE E. BRIDWELL
Attorney for Appellant

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STATEMENT OF POINTS RELIED UPON

POINT ONE

A UNILATERAL MISTAKE CAUSING TWO PEOPLE
TO SUFFER A LOSS, REQUIRES THE ONE AT FAULT TO
BEAR THE LOSS.

POINT TWO

TITLE 16, CHAPTER 3, SECTIONS 6, 7 AND 20 (2), 1953 UTAH CODE ANNOTATED PREVENT RESPONDENT FROM RESCINDING THE 31,000 SHARE OVER-ISSUE TO APPELLANT.

STATEMENT OF FACTS

Plaintiff is a Uranium Company of the State of Utah that obtained its capital by a public offering of shares of its common capital stock. One of the Underwriters for that public offering was James E. Reed, Appellant.

As part of the Underwriting agreement between Appellant and Respondent, Appellant was entitled to an option to subsequently purchase 58,334 shares of common stock of Respondent Corporation for the price of $3\frac{1}{2}c$ per share (Plaintiff's Exhibit No. 1).

On the 25th day of April, 1956, Appellant James E. Reed exercised his option for the purchase of 58,334 shares and sent a check to Plaintiff Corporation for \$2,041.69, $3\frac{1}{2}c$ per share. The Corporation cashed the check and used the funds. (Stipulation Tr. 104-105).

The 58,334 shares were issued to Appellant in one certificate (Tr. 105, Lines 1 to 4) in early May of 1956 (Tr. 106).

The Appellant returned the certificate to the transfer agent of the Company, requesting that it be broken into certificates of 1,000 shares each, which the plaintiff corporation refused to permit. The company also refused to return the 58,334 share certificate (Tr. 105, Lines 7 to 24).

Both parties to this action subsequently stipulated that said shares, less 31,000 shares, should be returned to Appellant. They were returned, without waiver of any kind or nature of rights to continue the assertion of claim of right to the 31,000 shares retained by Plaintiff Corporation.

The Corporation, after the issue of said 58,334 shares to Appellant, instituted this action to recover the 31,000 shares, claiming it had originally overissued that amount to James E. Reed.

The overissue was made seven months previous to the date Reed exercised his option, to-wit, on or about September 6, 1955. (Conclusions of Law #4).

Defendant-Appellant, James E. Reed, while the stock was selling for 3c per share, immediately transferred it to other persons under his underwriting commitments (Tr. 101, Lines 11 to 17).

On the date that Mr. Reed exercised his option, the shares were worth 22c each on the open market.

On the day of the trial, said shares were on the market at 43c per share (Tr. 90, Lines 1 to 11).

Appellant-Counter-claimant has requested specific delivery of 31,000 shares.

POINT ONE

A UNILATERAL MISTAKE CAUSING TWO PEOPLE TO SUFFER A LOSS, REQUIRES THE ONE AT FAULT TO BEAR THE LOSS.

It is clear and undisputed that Respondent Corporation's transfer agent had full control of the stock and the stock records of all stock issued to Appellant's order.

It is clear, as the trial Court found, that there was an over-issue of 31,000 shares of stock to Appellant on or about the 6th day of September, 1955, and those shares went to other people, not to the Appellant (Tr. 86, Line 23 to Tr. 87, Line 2), and respondent Corporation then knew it.

It is further testified to by a Certified Public Accountant employed by Respondent Corporation, Respondent's witness, that the Corporation's records as to stock entitlement to Appellant were accurate and that information was available to the Company, (Tr. 27, Line 11 to Line 30), and yet the trial Court found at paragraph 4 of its Findings of Fact, last sentence, that the over-issue to Appellant was not due to negligence or lack of care of Respondent. That finding is wholly contrary to Respondent's own testimony.

Appellant innocently took the stock proffered by Respondent and gave it to others—then seven months later, when the stock was selling for 19c more per share, Respondent Corporation off-sets an entitlement to Appellant, causing substantial loss to Appellant, because of original error and negligence of the Respondent.

At 19 Am. Jur. 77, it is stated:

"It is stated as a general rule that in order to justify the granting of relief on the ground of mistake, the parties must have been mutually mistaken, a mistake by one not being relievable."

It must be borne in mind that Respondent in this action is the one that sought relief from the over-issue initially. That Respondent later withheld its 31,000 share claim from the 58,334 share option exercised by Appellant in May of 1956.

“ . . . Mistake, to constitute the right to equitable relief, must not be merely the result of inattention, personal negligence, or misconduct on the part of the party applying for relief.” 19 Am. Jur. 78.

And further, . . . “Unless the parties can be restored to the situation they occupied prior to entering into the contract, a Court of equity is always reluctant to decree rescission or otherwise grant relief on the ground of mistake.”—19 Am. Jur. 79.

At the time of over-issue, the shares were 3c each and they all went to other third parties, not Appellant, which precept is not disputed in the record at any place.

When Respondent attempted to and did off-set the over-issue of Appellant's 31,000 shares, some seven months later, the shares were 22c apiece.

Appellant should not be penalized by the mistake of Respondent.

POINT TWO

TITLE 16, CHAPTER 3, SECTIONS 6, 7 AND 20 (2),
1953 UTAH CODE ANNOTATED PREVENT RESPOND-
ENT FROM RESCINDING THE 31,000 SHARE OVER-
ISSUE TO APPELLANT.

Title 16, Section 3, Chapter 3, Section 7, 1953 Utah Code Annotated provides:

“RIGHT TO RESCIND TRANSFER—GROUNDS.

—If the endorsement or delivery of a certificate:

- (1) Was procured by fraud or duress; or,
- (2) Was made under such mistake as to make the endorsement or delivery inequitable; or,

If the delivery of the certificate was made:

- (3) Without authority from the owner; or,
- (4) At the owner's death or legal incapacity;

The possession of the certificate may be reclaimed and the transfer rescinded, unless—

- (a) The certificate has been transferred to the purchaser for value and good faith without notice of any facts making the transfer wrongful; or,
- (b) The injured person has elected to waive the injury, or has been guilty of laches in endeavoring to enforce his rights.”

It is respectfully submitted that not only had the certificates in question that were delivered to Appellant by mistake been transferred to innocent third parties without notice of any infirmity, but that Respondent Corporation was guilty of laches in endeavoring to enforce its rights, in that it permitted approximately seven months to lapse before wrongfully off-setting its claim 31,000 share over-issue. During that time the stock had increased 19c in price.

There is absolutely no evidence to controvert the flat statement that all of the actions of the Appellant in this matter were done in good faith. There is nothing to controvert that the over-issue of 31,000 shares of Respondent Corporation was a result of its own negligence.

The mere fact, however, that Respondent Corporation was negligent does not destroy the bona-fides of these whole transactions, as by statute it is determined that mere negligence does not destroy good faith or honesty because of the provisions of Title 16, Chapter 3, Section 20, (2), which provides:

“A thing is done in good faith within the meaning of this Chapter when it is in fact done honestly, whether it is done negligently or not.”

CONCLUSION

It is respectfully submitted that this Honorable Court, in the exercise of its equitable conscience, should not permit the Respondent Corporation to rescind the transfer of shares that were originally made as a result of its own neglect, and thus cause a loss to fall upon an innocent party dealing with it because of a great rise in value of those shares at a time seven months later than the Corporation's original negligence. Appellant acted in good faith and gave the shares away for 3c. Respondent should not be permitted to recover, because its own inattention to its own affairs caused the loss.

Respectfully submitted,

GEORGE E. BRIDWELL

Attorney for Appellant