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

Utah Supreme Court

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In the Supreme Court of the State of Utah

WYOMING URANIUM COMPANY,
Plaintiff and Respondent,

v.

JAMES E. REED,
*Defendant Counterclaimant
and Appellant.*

UNIVERSITY UTAH

MAY 3 1958

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Case No.
8757

BRIEF OF RESPONDENT

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BRIEF OF RESPONDENT

RESTATEMENT OF THE CASE

The statement of facts as set forth by Appellant is substantially correct.

Briefly, the important facts are that Appellant was the principal underwriter for a public offering of the stock of Respondent, Wyoming Uranium Company. As a part of the underwriting agreement Appellant was entitled to an option, after the offering had been completed, to purchase 58,334 shares of the stock of Respondent at $3\frac{1}{2}$ c per share.

By mistake on the part of Respondent 31,000 shares of stock in excess of the authorized issue was delivered to Appellant on September 6, 1955. ^(R 169) The error was not discovered until January or February, 1956. ^(R 27, 31, 39) On March 21, 1956, Respondent wrote a letter to Appellant stating that the audit of the Company's books disclosed that there had been issued to Appellant 31,000 shares for which nothing had been paid to Respondent, and which was an over-issue. Respondent suggested that Appellant make payment for the 58,334 shares for which he held an option, and that Respondent retain the 31,000 shares, and forward the balance of 27,334 shares to Appellant (Exhibit P-8). The Appellant answered that it was his understanding that the discrepancy was only 30,000 shares instead of 31,000 shares (Exhibit P-9).

The trial court found that on the 6th of September, 1955, Respondent delivered to Appellant 31,000 shares of capital stock of Respondent to which Appellant was not entitled and for which Appellant had not paid, and that said shares of stock were not delivered as the result of negligence on the part of plaintiff (R. 169).

When nothing was done by Appellant to return the 31,000 shares which had been issued by mistake, Respondent filed suit for the return of said 31,000 shares on June 1, 1956. (R 2)

Appellant before June 1, 1956, paid the purchase price of the 58,334 option shares, and the certificate was issued therefor. When the certificate was returned to the Company to be issued in several certificates, Respondent withheld the 31,000 shares to which the Court found it

was entitled, and delivered certificates totaling 27,334 shares, the balance of the stock, to Appellant. ^(R 162) A stipulation was executed by the parties, and the persons named as assignees of the stock, at the time of the issuance and delivery of the 27,334 shares that the issuance and delivery of said 27,334 shares would not affect the rights of the parties as to the 31,000 shares in dispute, and that the parties whose names appeared on the stock certificates as assignees thereof waived any claims against Appellant or Respondent. ^(R 13-14)

Appellant in this matter filed Notice of Appeal, Statement of Points Relied Upon, and Designation of Record on Appeal on the 15th of October, 1957, but left no copy of the Notice of Appeal for service on Respondent, and did not serve a copy of the Designation of Record on Respondent. As the record in this case shows, no proof of service was appended to any of the instruments mentioned, and no separate proof of service was filed. Respondent did not learn that an appeal had been taken until November 18, 1957, more than a month after Notice of Appeal was filed.

Appellant has argued his case under two propositions:

1. That a unilateral mistake causing two people to suffer a loss requires the one at fault to bear the loss.
2. That under the provisions of Title 16, Chapter 3, Sections 6, 7 and 20(2), 1953 Utah Code Annotated, Respondent is prevented from rescinding the 31,000 shares of stock over-issue to Appellant.

It is the position of Respondent :

1. That the appeal should be dismissed because not properly taken.

2. The over-issuance of 31,000 shares by mistake entitled Respondent to a restitution of the 31,000 shares of stock which Respondent obtained before the trial of this action.

Respondent is, therefore, presenting its case under three points :

POINT I.

APPELLANT'S APPEAL SHOULD BE DISMISSED FOR FAILURE TO COMPLY WITH THE RULES OF CIVIL PROCEDURE.

POINT II.

THE OVER-ISSUANCE OF 31,000 SHARES OF STOCK TO APPELLANT BY MISTAKE ENTITLED RESPONDENT TO A RESTITUTION OF SAID 31,000 SHARES OF SAID STOCK.

POINT III.

TITLE 16, CHAPTER 3, SECTIONS 6, 7 and 20(2), 1953 UTAH CODE ANNOTATED, DOES NOT PREVENT RESPONDENT FROM RESCINDING THE 31,000 SHARES OVER-ISSUE TO APPELLANT.

ARGUMENT

POINT I.

APPELLANT'S APPEAL SHOULD BE DISMISSED FOR FAILURE TO COMPLY WITH THE RULES OF CIVIL PROCEDURE.

Rule 73(a) Provides in part:

“A party may appeal from a judgment by filing with district court a notice of appeal, together with sufficient copies thereof for mailing to the Supreme Court and all other parties to the judgment, and depositing therewith the fee required for docketing the appeal in the Supreme Court. The clerk of the district court shall forthwith transmit one copy of Notice of Appeal, showing the date of filing, together with the required fee, to the Supreme Court where the appeal shall be duly docketed. Failure of appellant to take any of the further steps to secure the review of the judgment appealed from does not affect the validity of the appeal, but is ground only for such remedies as are specified in this rule, or when no remedy is specified, for such action as the Supreme Court deems appropriate, which may include dismissal of the appeal.”

Respondent submits that this section provides that in addition to filing the appeal within one month sufficient copies shall be left with the Court for service upon the parties to the judgment. It has been held repeatedly that the appeal must be filed within one month or it is too late. Respondent submits that under the wording

of *Section 73(a)* the filing of sufficient copies for mailing to the Supreme Court and all other parties to the judgment is jurisdictional.

Rule 75(a) provides that the Designation of Record on Appeal shall be served upon Respondent and filed with the District Court within ten days after the filing of the Notice of Appeal. In this matter the Designation of Record on Appeal was never served upon Respondent.

In the case of *Holton v. Holton*, 121 Utah 451, 243 P. (2d) 438, this Court dismissed the appeal for failure to serve the Designation of Record.

POINT II.

THE OVER-ISSUANCE OF 31,000 SHARES OF STOCK TO APPELLANT BY MISTAKE ENTITLED RESPONDENT TO A RESTITUTION OF SAID 31,000 SHARES OF SAID STOCK.

Appellant concedes that there was a 31,000 share over-issue of stock to Appellant by Respondent by mistake for which Appellant paid nothing. The Court found that there was no negligence on the part of Respondent in the matter of the over-issuance of said stock.

The principle of law is well established that if one by mistake delivers property to another to which he is not entitled, the first party is entitled to restitution of said property, otherwise the recipient is unjustly enriched.

The law in this matter is set forth under the title "Restitution" in 77 *C.J.S.*, 322, 323. As stated therein:

"Restitution, in legal nomenclature, is an equitable principle, and is founded on the equitable maxim that he who seeks equity must do equity, and one of the grounds on which the doctrine is based is that when one person confers a benefit on another through mistake, whether of fact or law, that other is liable to make restitution. It is sometimes considered to be the modern designation for the older doctrine of quasi contracts.

"A cause of action for restitution is a type of the broader cause of action for money had and received, and generally the object to be obtained in proceedings for restitution is the prevention of unjust enrichment of defendant and the securing for plaintiff of that to which he is justly and in good conscience entitled. A person who has been unjustly enriched at the expense of another is required to make restitution to the other and if one obtains the property or the proceeds of property of another without a right to do so, restitution in a proper case can be compelled . * * *

"It is not necessary, in order to create an obligation to make restitution that the party unjustly enriched should have been guilty of any tortious or fraudulent action; the question is, did he, to the detriment of someone else, obtain something of value to which he was not entitled? In such cases the simple, but comprehensive, question is, whether the circumstances are such that equitably defendant should restore to plaintiff what he has received.

"At common law the word 'restitution' was employed to denote the return or restoration of a specific thing or condition, but in modern usage restitution may go beyond the act of returning

the thing taken and, in its broad sense, is not confined to the return of something of which one has been deprived, but includes compensation for loss, damage or injury done to another.

“Restitution is not a mere right but is ex gratia resting in the exercise of a sound discretion and the Court will not order it where the justice of the case does not call for it or where the process is set aside for a mere slip.”

The same principles are set forth in *46 Am. Jur. 99 to 101*, under the title “Restitution and Unjust Enrichment.”

In this case the Court exercised its discretion and held that Respondent was entitled to the restitution of the 31,000 shares of stock delivered to Appellant by mistake and for which Appellant paid nothing.

The law in this matter is set forth in *Williston on Contracts, Vol. 5, Section 1575, pages 4404-5*, as follows:

“The same principle of justice which requires the return of money paid under a mistake requires that other benefits received under a similar mistake should likewise be restored. If the transferee still has possession of all or part of what has been transferred, or of anything received by him in exchange for it, when demand is made upon him, or when he discovers the real facts, a mistake of such a character as ever to justify rescission should subject him to a duty to return in specie what he has in his possession, and a failure to perform the duty should involve liability for its value.”

In the case at bar the Respondent was entitled to retain 31,000 shares of Appellant's option stock to replace the 31,000 shares of the same kind of stock delivered by mistake to Appellant.

Appellant argues that Respondent was negligent in delivering the stock because its Transfer Agent had full control of the stock and the stock records, and that appellant innocently took the stock to which he was not entitled. As before stated the Court found that Respondent was not negligent. However, under the principles of restitution, even though Respondent were negligent in delivering the stock, it would still be entitled to the return of the stock delivered by mistake.

In the case of *Duffy v. Scott*, 292 N.W. 273, 235 Wis. 142, the Court said:

“Going to the Restatement, Law of Restitution, we find general statements supporting the instant judgment. Section 1: ‘A person who has been unjustly enriched at the expense of another is required to make restitution to the other.’ Comment under the above implies that where a person receives a benefit from another he is liable to pay therefor if the circumstances of its receipt or retention are such that as between the two it is unjust for him to retain it. One of the grounds on which the doctrine of restitution is based is that, when one person confers a benefit on another through mistake, whether of law or fact, the other is liable to make restitution. By Section 6: ‘Mistake (of fact) means a statement of mind not in accord with the facts.’

* * *

“To make the doctrine of restitution applic-

able it is not necessary that the recipient be guilty of tortious conduct or at fault himself. Section 155, Restatement, Restitution, covers cases where a person is entitled to restitution from another where the other without tortious conduct receives a benefit. Comment a.p. 612 under this Section states that the rule of the section applies where there was no tortious conduct on the part of recipient and where claimant was at fault and the recipient was not. 'Fault' as used in this comment covers failure to use care to ascertain relevant facts, p. 573. Thus, if plaintiff was negligent in not ascertaining the authority of Wick to borrow money for defendant, and defendant was not at fault in depositing the check by which Wick had transmitted the money procured by using plaintiff's bonds as collateral, defendant became liable to make restitution."

In the very recent case of *Hixon v. Allphin*, 281 Pac. (2d) 1042, 76 Ida. 327, the Court said:

"It is not necessary in order to create an obligation to make restitution or to compensate, that the party unjustly enriched should have been guilty of any tortious or fraudulent act. The question is: Did he, to the detriment of someone else, obtain something of value to which he is not entitled? See Am. Jur. 99, Restitution and Unjust Enrichment. * * *

"In an action for restitution plaintiff is entitled either to the value of goods, rights and benefits at the time of their transfer, plus interest on said sum during the time of its detention, or to restoration of the property and rights plus damages during the time of their detention, based

upon compensation for their use or rental value. Restatement of Restitution, Sec. 157, pp. 621, 625, 627."

Appellant argues that since the stock increased in value between the time of the over-issue and delivery by mistake of 31,000 shares and the time of the retention of said 31,000 shares by Respondent out of the option shares to which Mr. Reed was entitled, Appellant was penalized because of the mistake of Respondent, and contends that Respondent is guilty of laches in enforcing its rights because it permitted approximately seven months to elapse before wrongfully offsetting its claim of 31,000 shares.

As heretofore pointed out, as soon as Respondent learned of the mistake demand was made upon Appellant for the return of the stock and suggestion was made to Appellant that he exercise his option, pay for the 58,334 shares to which his option entitled him, and consent that 31,000 shares thereof be retained by Respondent in restitution of the shares by mistake delivered to Appellant. This Appellant refused to do and a little more than two months later Respondent filed suit for the return of said 31,000 shares, and three or four months after the filing of the Complaint obtained the 31,000 shares by withholding it from the option stock delivered to Appellant.

Respondent submits that it was not guilty of laches in this matter.

POINT III.

TITLE 16, CHAPTER 3, SECTIONS 6, 7 and 20(2), 1953 UTAH CODE ANNOTATED, DOES NOT PREVENT RESPONDENT FROM RESCINDING THE 31,000 SHARES OVER-ISSUE TO APPELLANT.

Appellant argues under Point II that Respondent is prevented from rescinding the 31,000 shares over-issue to Appellant by reason of the provisions of Title 16, Section 3, Chapter 3, Section 7, 1953 Utah Code Annotated, and sets forth in full the provisions of Section 16-3-7, "Right to Rescind Transfer — Grounds."

As set forth in Appellant's Brief, the statute provides that the possession of a certificate may be reclaimed and transfer rescinded after the endorsement or delivery of a certificate:

"Was made under such mistake as to make the endorsement or delivery inequitable."

It was on the ground that the certificate was delivered "under such mistake as to make the delivery inequitable" that the Court in this case found for the Respondent. Thus the Section cited by Appellant is authority in support of the decision of the Trial Court.

Appellant argues that under another provision of that Section:

"the possession of a 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."

Respondent submits that the foregoing provision is applicable in an action between a bona fide purchaser for value without notice, and would have no application in this case between Respondent and Appellant.

SUMMARY

The Court found that Appellant received all stock to which he was entitled and for which he had paid. It would be inequitable and would constitute unjust enrichment if Appellant were permitted to retain the stock delivered to him by mistake. The Court found that Respondent was not negligent in delivering the over-issue to Appellant. Under the principles of Restitution even though Respondent were negligent, it would be entitled to recover the stock delivered by mistake. The mere fact that the stock rose in value while Respondent was attempting to get back the over-issue gives Appellant no cause of action. There is no evidence that Appellant was obliged to purchase stock at an increased price to meet his commitments. The assignees named on the back of stock certificate kept in part by Respondent, waived in writing any claim against Appellant or Respondent.

Respondent submits that the Trial Court was right in its decision and the appeal should be dismissed.

Respectfully submitted,

J. GRANT IVERSON
Attorney for Respondent