1983

Harry Loader dba Loader Aluminum Co. v. Scott Construction Corp. : Brief of Respondent

Utah Supreme Court

John H. McDonald; Craig S. Cook; Attorneys for Defendant-Appellant;
Stanley Smith; Attorney for Plaintiff-Respondent;

IN THE SUPREME COURT OF THE STATE OF UTAH

HARRY LOADER, dba LOADER ALUMINUM CO.,	:	
Plaintiff-Respondent,	:	
vs.	:	Case No. 18305
SCOTT CONSTRUCTION CORP.,	:	
Defendant-Appellant.	:	

BRIEF OF RESPONDENT

Appeal from the Judgment of the
Fourth Judicial District Court, Utah County
Honorable George E. Ballif

STANLEY R. SMITH
8 North Center
P.O. Box 308
American Fork, UT 84003

Attorney for Plaintiff-
Respondent

JOHN H. McDONALD
370 East 500 South, #100
Salt Lake City, UT 84111

CRAIG S. COOK
3645 East 3100 South
Salt Lake City, UT 84109

Attorneys for Defendant-
Appellant.

IN THE SUPREME COURT OF THE STATE OF UTAH

HARRY LOADER, dba LOADER ALUMINUM CO.,	:	
Plaintiff-Respondent,	:	
vs.	:	Case No. 18305
SCOTT CONSTRUCTION CORP.,	:	
Defendant-Appellant.	:	

BRIEF OF RESPONDENT

Appeal from the Judgment of the
Fourth Judicial District Court, Utah County
Honorable George E. Ballif

STANLEY R. SMITH
8 North Center
P.O. Box 308
American Fork, UT 84003

Attorney for Plaintiff-
Respondent

JOHN H. McDONALD
370 East 500 South, #100
Salt Lake City, UT 84111

CRAIG S. COOK
3645 East 3100 South
Salt Lake City, UT 84109

Attorneys for Defendant-
Appellant.

TABLE OF CONTENTS

CASES CITED

STATUTES CITED

OTHER SOURCES

IN THE SUPREME COURT OF THE STATE OF UTAH

HARRY LOADER, dba LOADER ALUMINUM CO., Plaintiff-Respondent,	:	**BRIEF OF APPELLANT**
v.	:	
SCOTT CONSTRUCTION CORP., Defendant-Appellant.	:	Case No. 18305

NATURE OF THE CASE

This is an action commenced by the plaintiff to collect a debt owed him by the defendant. The defendant incurred the debt as a general contractor when he contracted for and accepted, yet failed to pay for the specified work of aluminum siding installation received from the plaintiff.

DISPOSITION IN LOWER COURT

The lower court found the defendant liable to the plaintiff in the amount of $10,000, and entered judgment to that effect.

RELIEF SOUGHT ON APPEAL

Respondent seeks to have the lower Court's ruling affirmed and to have an award for the costs of this appeal.

STATEMENT OF FACTS

Respondent agrees with the Statement of Facts set forth in Appellant's brief.

ARGUMENT

I

A LICENSED GENERAL CONTRACTOR CANNOT ESCAPE LIABILITY TO UNLICENSED SUBCONTRACTORS SOLELY ON THE GROUND OF UNENFORCEABILITY OF THE CONTRACT DUE TO NON-LICENSING.

The defendant seeks to avoid liability of a $10,000.00 debt due the plaintiff for installation of aluminum siding. The plaintiff fully performed his part of an agreement with defendant and is entitled to payment thereof. Defendant alleges that the plaintiff must prove licensing before suit can be brought, or in other words, that recovery is barred due to the plaintiff's non-licensing. However, defendant cannot avoid its liability solely on this theory as the facts of this case present an exception to the general rule.

This court recently held in Fillmore Products v. Western States Painting, 561 P.2d 687 (Utah 1977) that a licensed general contractor cannot escape liability to unlicensed subcontractors solely on the ground of unenforceability of the contract due to non-licensing. The

licensed contractor by obtaining his license is held to expertise in the contracting business and is thereby informed of the necessity of licensing and the underlying purpose.

In Fillmore, the defendant and general contractor failed to pay $34,738.39 in materials furnished and work and labor performed under the contracts. The defendant was granted summary judgment by the District Court on the grounds that the plaintiff had failed to allege in its complaint that it was a licensed contractor. This court, however, reversed and remanded the case finding that the law which required licensing was intended for protecting the public and was not to become "an unwarranted shield for the avoidance of a just obligation." Matchett v. Gould, 131 Cal. App. 2d 821, 281 P.2d 524 (1955).

This same principal was again applied by the Federal Circuit Court in behalf of Utah residents in Dow, et al v. United States, 154 F2d 707 (1946). There, Dow was a licensed contractor and had received a government contract to construct six warehouses. He entered into an illegal subcontract with the plaintiff, Holley, for part of the work, namely, footing excavation. Holley performed his part of the agreement. Certain payments were made with the reservation due to dissatisfaction with the work. The

controversy arose as to whether there was a balance due. The question of the plaintiff's right to maintain the action was raised. The court found the work done to specifications and further found that the violation of the statutory provision requiring licensing did not bar recovery. The court, in fact, stated (Dow, 710):

> But the general rule does not have application in a case of this kind in which an unlicensed member of a profession or trade seeks to recover from a licensed member for services rendered or labor performed pursuant to the contract entered into by them.

This same principle is reiterated in Corpus Jurum where it is stated:

> And it has been held that such a law is not applicable in a case in which an unlicensed member of a profession or trade seeks to recover on a contract for services entered into with a licensed member of the same profession or trade. 59 C.J.S. 712

According to this exception, which holds a licensed contractor to expertise in the contracting business, application of the general rule cannot be maintained by Scott in this action.

The defendant seeks to rely on Meridian Corp v. McClinn/Gammaker Co., 567 P.2d 1110 (Utah 1977). Meridian is distinguishable in that it does not deal with the

contractor-subcontractor relationship. There, the question was one of a general contractor having an out-of-state license rather than a Utah license. The resolution of the Meridian question sheds no light on the contractor-subcontractor exception to the general rule. However, Justice Crochett stated in the dissenting opinion that it was manifestly unjust for the unlicensed contractor to remain uncompensated for work performed on the mere technicality of non-licensing.

The facts of this case fall within the exception of the general rule. Even so, this court has a history of not applying that general rule inflexibly or too broadly. Lignell v. Berg, 593 P.2d 800 (Utah 1979), Motivated Management International v. Finney, 604 P.2d 467 (Utah 1979), Platt v. Locke 358 P.2d 95 (Utah 1961), and Butterfield v. Chenney, 366 P.2d 607 (Utah 1961).

In Motivated Management, the court held that Fillmore was controlling and because some of the work was performed in part by a licensed contractor the protection afforded by a licensed contractor was provided.

In the present case, defendant cannot use a law intended to protect the public as "an unwarranted shield for the avoidance of a just obligation" (Fillmore, 690).

II

THE 1981 AMENDED LAW ON LICENSING IS NOT APPLICABLE IN THIS CASE.

The appellant seeks to persuade the court that the amendment to the State Law concerning licensing and contractors, 58-1-1, U.C.A. et al seq. (Supp. 1953) "requires full emphasis upon the new amended statute rather than upon this court's prior decisions." Nothing in the Code implies a legislative intent to overrule the prior decisions of this Court, or to have the 1981 amendment apply retroactively.

The 1981 amendment expressly states the necessity of licensing in order to bring suit. Prior to this amendment, the only sanction provided by the Code against non-licensed contractors was that they would be guilty of a misdemeanor.

Indeed, it clearly appears that legislative intent was to codify the general rule of a contract being void when entered into between an unlicensed contractor and a third party. The amended law is not out of harmony with the court's prior decisions concerning the licensing requirement. Olsen v. Reese, 200 P.2d 733, 736 (Utah 1948), Meridian Corp. v. McGylnn/Garmaher Co., 567 P.2d 1110 (Utah 1977). Neither is it out of harmony with the exceptions to

the general rule provided by this Court. In fact, the annotations which immediately follow the licensing requirement provision include the contractor-subcontractor exception found in Fillmore which is controlling in the instant case. Other exceptions noted are Lignell and Motivated Management, both cases were mentioned in the appellant's brief.

The two cases (Industrial Commission, Colo.; McDermott, Okla.) cited as precedent by the appellant in hope of persuading the court that prior court decisions became void as of the 1981 amended law are from foreign jurisdictions and the fact patterns are unrelated to the licensing issue in this case.

Furthermore, the contractual agreements in this case were entered into in 1978 and 1979 with the work being fully performed before the enactment of the 1981 amendment which the appellant urges the court to inappropriately apply. The application of the amended law as sought by appellant would be wrong not only because of the exception presented by the particular facts of this case, but also because the law was not in force when this question arose.

III

THE THEORY OF QUANTUM MERIUT REQUIRES THE DEFENDANT TO PAY FOR THE BENEFITS HE CONTRACTED FOR AND ACCEPTED FROM THE PLAINTIFF.

This court recently recognized the necessity of considering unjust enrichment in order that justice may be done. In Breitling Brothers Construction, Inc. v. Utah Golden Spikers, Inc., 597 P.2d 869 (Utah 1979), a construction company brought suit to recover the value of labor and materials furnished in connection with the removal of a race track on state property and the installation of a soccer field. The Third District Court entered judgment in the state's favor and the plaintiff appealed. The Supreme Court remanded the case finding the question of unjust enrichment a necessary consideration in order that justice may be done.

Here, the plaintiff has brought suit to recover for the benefit he conferred upon the defendant without just compensation. Scott knowingly contracted with Loader for the installation of aluminum siding. All the work performed by Loader was ordered and necessary for the completion of the agreement (R.34) and was done to the satisfaction and benefit of the defendant, (TR.47, 48). The payment was pre-determined according to a fixed schedule, and Loader

billed Scott as he completed the installation of aluminum siding on each project. The amount of the debt was stipulated at $20,055.17. Loader remains uncompensated for $10,000.00 worth of benefit conferred upon the defendant. According to the above facts, unjust enrichment is a valid consideration, and should be an alternative basis for sustaining the lower court's judgment. The plaintiff is entitled to the $10,000.00 settlement for benefit received by the defendant.

Addressing the issue of unjust enrichment in cases such as this, Justice Crochett in Meridian in a dissenting opinion stated:

> It seems to me manifestly unjust to permit one to accept a benefit and refuse to pay for it; because of some technical deficiency relating to one who does the work. . .on the basis of unjust enrichment, the one who receives the benefit should be required to pay its reasonable value.

Finally, Corbin comments on the situation where a plaintiff seeks compensation from a defendant that refuses to pay for benefits conferred.

> He may have rendered excellent service or delivered goods of highest quality, his non-compliance with the statute seems nearly harmless, and the real defrauder seems to be the defendant, who is enriching himself at

the plaintiff's expense. Corbin on Contracts, Volume 6A, Section 1512.

CONCLUSION

Scott, the licensed general contractor, is held to a degree of expertise that implies notice. He, therefore, is barred from denying his responsibility to the plaintiff solely for non-licensing purposes. The 1981 statutory provision denying suit without first being licensed is not applicable to the respondent's rights arising in 1978-1979 against appellant. Furthermore, appellant would be unjustly enriched to escape liablity from a debt he owes. The ruling of the lower Court should be affirmed and the costs of his appeal awarded to respondent.

Respectfully submitted.

Stanley R Smith

STANLEY R. SMITH
Attorney for Plaintiff-
Respondent

CERTIFICATION OF MAILING

On the 14th day of February, 1983, I mailed two copies of the foregoing Brief of Respondent to each of the following:

John H. McDonald
370 East 500 South, #100
Salt Lake City, UT 84111

Craig S. Cook
3645 East 3100 South
Salt Lake City, UT 84109

Kellie Carlton