1982

General Leasing Company v. Manivest Corp. : Brief of Respondent

Utah Supreme Court

J. Bruce Reading; Morgan, Scalley & Davis; Attorney for Defendant-Appellant;
Steven A. Gunn; Ray, Quinney & Nebeker; Attorney for Plaintiff-Respondent;

IN THE SUPREME COURT

OF THE STATE OF UTAH

NO. 18348

GENERAL LEASING CO.,

Plaintiff-Respondent,

v.

MANIVEST, INC.,

Defendant-Appellant.

BRIEF FOR RESPONDENT

APPEAL FROM THE THIRD JUDICIAL DISTRICT

OF

SALT LAKE COUNTY

THE HONORABLE HOMER F. WILKINSON, JUDGE

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NATURE OF THE CASE

This is an action brought by plaintiff against defendant for conversion and unjust enrichment.

DISPOSITION BELOW

This matter was heard by the Honorable Homer F. Wilkinson, sitting as the finder of fact. Following the trial, Judge Wilkinson ruled in favor of plaintiff and granted judgment for $40,000.00. Subsequently, on the court's own

motion, Judge Wilkinson reduced the amount of the judgment to $23,550.00. The court thereafter amended the judgment to $18,000.00 on defendant's motion for a new trial.

RELIEF SOUGHT ON APPEAL

Plaintiff requests that the findings of the district court be affirmed and the judgment be modified as to damages in the amount of $40,000.00.

STATEMENT OF THE FACTS

In October, 1977, plaintiff General Leasing Company purchased certain heating and air conditioning equipment from AAA Furnace Company. R. 136, P's Exh. 1. Plaintiff leased this equipment to Peck and Shaw Fine Cars, Inc. ("Peck and Shaw"), pursuant to a lease dated October 3, 1977. R. 136, P's Exh. 2. The cost of the leased equipment at the time of installation was $63,466.00. R. 136, P's Exh. 1. Pursuant to the terms of the lease, the heating and air conditioning equipment remained the personal property of plaintiff even though it became attached to real property. R. 136, 167-68, P's Exh. 2.

Peck and Shaw installed plaintiff's heating and air conditioning equipment on the building it leased from defendant Manivest, Inc. at 5650 South 900 East, Murray, Utah. In late

January, 1980, Peck and Shaw abandoned the building leased from defendant. R. 137, 163.

When Peck and Shaw abandoned defendant's building, plaintiff demanded that defendant return the leased equipment or pay for it. R. 137, 163. In response to plaintiff's demands, defendant acknowledged that the equipment belonged to plaintiff. R. 137, 182-83, 221. Although defendant knew that the heating and air conditioning equipment belonged to plaintiff, defendant refused to return the equipment or pay for it. R. 137, 163.

The intention of Peck and Shaw, in installing plaintiff's heating and air conditioning equipment on defendant's building, was for the equipment to remain the personal property of plaintiff. R. 136, P's Exh. 2. Plaintiff's heating and air conditioning equipment was standard commercial equipment that could be used in many buildings and was not designed specially for defendant's building. R. 137, 194, 203. The air conditioners (swamp coolers) were a commercial size and a stock item. R. 194. Similarly, plaintiff's heating eqipment was adaptable to a number of buldings and was not specially designed for defendant's building. R. 203.

Plaintiff's air conditioners were not bolted or attached to defendant's building. They rested on the roof on

four by four boards. R. 196, P's Exh. 12. The bottom discharge swamp coolers could be removed by disconnecting the water and electrical lines and lifting them off the roof. R. 199-200. The side discharge units could be removed by unscrewing eight screws to the duct work and lifting the units off the roof. Id., P's Exh. 5. The heating equipment could be removed by unhooking the chains that supported the heating tube and lowering the tube to the ground. R. 204, P's Exhs. 16-17. There would be no damage to defendant's building by removing plaintiff's heating and air conditioning equipment. R. 201, 204.

The value of plaintiff's heating and air conditioning equipment that could be removed without damaging defendant's building, at the time defendant refused to return or pay for it, was $18,000.00. R. 137, 209-11. The value of the heating and air conditioning equipment as installed on defendant's building at the time defendant refused to return or pay for it was $40,000.00. R. 209-10.

ARGUMENT

I. THIS COURT SHOULD NOT SUBSTITUTE ITS IDEA OF THE FACTS FOR THAT OF THE TRIAL COURT WHERE THERE IS SUBSTANTIAL, COMPETENT EVIDENCE TO SUPPORT THE TRIAL COURT'S JUDGMENT

The standard rule of appellate review of trial court findings and judgments is to not disturb them when they are

based on substantial, competent, admissible evidence. Fisher v. Taylor, 572 P.2d 393, 394 (Utah 1977). The findings and conclusions of the trial court must be affirmed unless there is no reasonable basis in the evidence to support them. Nielsen v. Chin-Hsien Wang, 613 P.2d 512, 514 (Utah 1980). The evidence and all inferences that fairly and reasonably might be drawn therefrom must be viewed in a light most favorable to the judgment entered. Id. The defendant is required to sustain the burden of showing error. Hutcheson v. Gleave, 632 P.2d 815, 817 (Utah 1981).

After a trial on the merits and the district judge's findings based on competent evidence that the equipment in question was personal property and not fixtures, defendant now asks this Court not only to reweigh the evidence, but to fabricate evidence that was never produced at trial, in order to reverse the judgment of the trial judge.

II. THE TRIAL COURT'S FINDINGS THAT THE EQUIPMENT IS PERSONAL PROPERTY IS BASED ON SUBSTANTIAL EVIDENCE

In determining whether or not an item is a fixture, this Court has followed the majority in requiring a three-part test to be met. In State Road Commission v. Papanikolas, 19 Utah 2d 153, 427 P.2d 749 (1967), the Court described the components of the test as

(1) the manner in which the item is attached or annexed to realty; (2) whether the item is adaptable to the particular use of the realty; and (3) the intention of the annexor to make an item a permanent part of the realty.

In the present case, the district judge made specific findings of fact regarding each of the three components of the Papanikolas test. R. 137. Each of these findings was based on substantial evidence. In fact, there was no opposing evidence offered by defendant.

A. Plaintiff's Equipment was Easily Removable from Defendant's Building.

The only witness who testified on the issue of how the heating and air conditioning equipment was attached to defendant's building was Dennis Gunn, plaintiff's expert. He testified that the eight water evaporative coolers or swamp coolers were not attached to the building. They were sitting on the roof on four-by-four boards. They were not bolted or attached to the roof. R. 196. Mr. Gunn stated that to remove the air conditioners would involve no difficulty at all. The bottom discharge coolers could be removed by unhooking the water and electrical lines and lifting them off the roof. The side-mounted air conditioners could be removed by unscrewing eight screws to the duct work and lifting the units off the roof. It would take approximately four hours to remove eight air conditioners. R. 198-200. Mr. Gunn testified that there

would be no damage to the roof or building by removing the air conditioners in the manner he described. R. 201. The coolers do not have any flashing or anything to seal them to the roof. R. 212.

Similarly, Mr. Gunn testified that the heating system was suspended from the ceiling by a chain connected to a J-hook. P's Exhs. 16-17. To remove the system would merely require unhooking the chains and letting the heating tube down to the ground. After it was taken down, Mr. Gunn testified that you would not know it was ever there. R. 204. The only thing left would be two ten-inch penetrations in the wall and two exhaust pumps in the roof. P's Exhs. 21-23.

Contrary to the statements in defendant's brief, the exhaust fan had nothing to do with air conditioning and was not one of the items plaintiff is seeking damages for. Similarly, the two exhaust pumps were not included. As to the air conditioners, defendant acknowledges that the bottom discharge units merely rested on the roof. Defendant's Brief at 7. Defendant misstates the evidence on page 8 of its brief when it describes the side discharge units as being fastened to the side of the building. The side discharge units, like the bottom discharge units, rested on the roof on four by four boards. P's Exhs. 5 and 9.

B. Plaintiff's Equipment was not Specially Designed for Defendant's Building.

Unlike the machines in Papanikolas that were designed specially for the building they were installed in, the equipment in this case was standard commercial equipment that could be used in many buildings and was not designed specially for defendant's building.

Again, the only evidence at trial on this issue came from Dennis Gunn. He testified that the swamp coolers were a commercial size adaptable to a number of buildings. They were a stock item and were not specially designed for defendant's building. R. 194. As to the heating equipment, Mr. Gunn testified that it was not specially designed for the defendant's building, and was adaptable to a number of buildings. R. 203.

Defendant again produced no evidence to the contrary on this issue.

C. The Intention of the Annexor, Peck and Shaw, was for Plaintiff's Equipment to Remain Plaintiff's Personal Property.

Although defendant argues that the intention of the annexor can be gleaned from the surrounding circumstances, the intention of Peck and Shaw is clear and undisputed.

The lease of the equipment from the plaintiff to Peck and Shaw (P.'s Exh. 2) contained the following language:

> 1. OWNERSHIP. No right, title or interest in said property shall pass to Lessee except the lease rights expressly granted herein. Plates or other markings may be affixed or placed on said property indicating Lessor is the owner. Said property shall always remain and be deemed personal property even though attached to realty. (emphasis added).

One does not have to glean too far to see the express intention of the annexor. Again, there is absolutely no evidence to the contrary. In Grinde v. Tindall, 172 Mont. 199, 562 P.2d 818 (1977), the Supreme Court of Montana held that a provision in a contract stating that six fuel storage tanks "do not go with the land," was determinative in showing the intention of the parties that the tanks were personal property and not fixtures. Similarly here, the lease clearly states that the equipment was to remain personal property.

III. THE COURT'S AWARD OF DAMAGES OF $18,000.00 IS FULLY SUPPORTABLE ON A CONVERSION THEORY

Defendant's argument on appeal that the court's award of $18,000.00 includes duct work and other items, disregards the evidence at trial and the district court's ruling. When plaintiff's expert witness testified to the used value of plaintiff's equipment, it was clear that the figure he used of

$18,000.00 did not include the exhaust fan, duct work, water lines, electrical lines, and labor. R. 209-11. Indeed, the court on its own motion reduced the damage award from $40,000.00 to $18,000.00 on the ground that the duct work, electrical wiring, water lines, and labor had become part of the realty and could not be removed. R. 252-54. Defendant's selective citation of the testimony of plaintiff's expert witness on this issue misrepresents the evidence.

IV. PLAINTIFF IS ENTITLED TO DAMAGES OF $40,000.00 ON AN UNJUST ENRICHMENT THEORY

The district court ruled that the theory of unjust enrichment was inapplicable to the present case. R. 138, 253. In so doing, the court erred as a matter of law.

Unjust enrichment occurs whenever a person has and retains money or benefits which in justice and equity belong to another. L & A Drywall, Inc. v. Whitmore Construction Co., 608 P.2d 626, 630 (Utah 1980). This Court noted in Rapp v. Mountain States Tel. & Tel. Co., 606 P.2d 1189 (Utah 1980), that where work is ordered for the benefit of a building owner it must, in equity, be recompensed to avoid unjust enrichment. When a building owner receives the benefits of a plaintiff's work, recovery of the reasonable value thereof is warranted. Id.

In the present case, defendant received the benefit of a fully installed heating and air conditioning system. The reasonable value of this installed system was $40,000.00. R. 209-10. Defendant has retained this benefit which it knew and acknowledged belonged to plaintiff. R. 221. To allow defendant to retain an installed heating and air conditioning system by paying for only part of it will result in defendant's unjust enrichment.

CONCLUSION

In reviewing appeals from trial court findings and judgments this Court has wisely refused to disturb them when they are based on substantial, competent evidence. Defendant has failed to show that the trial court's findings were not based on such evidence.

Although the trial court's findings of fact were based on substantial, competent evidence, the court erred as a matter of law in refusing to apply the theory of unjust enrichment. Accordingly, the judgment of the district court should be modified as to damages in the amount of $40,000.00, and as modified, be affirmed.

DATED this 9th day of August, 1982.

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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of August, 1982, two true and correct copies of the foregoing Brief for Respondent was mailed, postage prepaid, to J. Bruce Reading, Attorney for Appellant, 261 East 300 South, Salt Lake City, Utah 84111.

Arlene H. Brannan