1959

Stanton Transportation Company et al v. Marvin Davis et al : Brief of Cross Respondents

Utah Supreme Court

Anthony F. Zarlengo; Clinton D. Vernon; Attorneys for Defendants and Cross Respondents;

In the Supreme Court
of the State of Utah

STANTON TRANSPORTATION COMPANY, a corporation,
Plaintiff,

CONTINENTAL EMSCO COMPANY, a division of YOUNGSTOWN SHEET AND TUBE COMPANY, a corporation,
Plaintiff and Cross Appellant,

vs.

MARVIN DAVIS, JACK DAVIS, JEAN DAVIS and JOAN PRESTON, partners, doing business under the firm name of DAVIS OIL COMPANY,
Defendants and Cross Respondents.

Case No. 8950

BRIEF OF CROSS RESPONDENTS

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CASES AND AUTHORITIES

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STATEMENT OF FACTS

The cross appeal of Continental Emsco Company is from the judgment of the trial court that items other than rock bits furnished to the driller, such as chisels, pipe wrenches, punches,

bolts, washers, putty knives, sledge hammer handles, screw drivers, hatchets, etc., and other items set out in the Exhibits which the court found were not consumed in the drilling of the well and therefor are not lienable. (TRB 114).

STATEMENT OF POINT RELIED ON

POINT I

MATERIALS FURNISHED TO A DRILLING CONTRACTOR IN THE NATURE OF REMOVABLE PERSONAL PROPERTY ARE NOT LIENABLE UNDER THE UTAH STATUTES.

ARGUMENT

POINT I

MATERIALS FURNISHED TO A DRILLING CONTRACTOR IN THE NATURE OF REMOVABLE PERSONAL PROPERTY ARE NOT LIENABLE UNDER THE UTAH STATUTES.

Cross Appellant Continental Emsco Company in its cross appeal cites one case as authority for its position, namely, *William M. Graham Gas and Oil Co. v. Oil Well Supply Co.,* 128 Okl. 201, 264 Pac. 591. This case clearly is not applicable because the materials and supplies referred to therein were furnished to the *owner* of the leasehold on a definite contract for payment. In the case at bar, the materials for which a lien is claimed were not sold to the owner of the leasehold but were sold to the drilling contractor and the credit was extended

to him. In the case of *Sklar v. Oil Incomes, Inc.,* 133 F2d 512, 5 Cir., (1943), the court, in footnote No. 7, referred to the *William M. Graham Oil and Gas Co.* case, *supra.,* as follows:

> "*Oklahoma seems to stand solitary and alone in rejecting this view. William W. Graham Oil & Cas Co. v. Oil Well Supply Co.,* 128 Okl. 201, 264 P. 591, overruling Arkansas Fuel Oil Co. v. McDowell, 119 Okla. 77, 249 P. 717. It must be noted, however, that in the Graham case, the liened materials were materials, machinery and supplies normally used or consumed in the drilling of a well, were furnished *to the owner* on a definite contract for payment, and that that case is not authority for the claim made here that a rig sold to a contractor as a part of his plant is lienable against the owner."

On page 20 of Cross Appellant's brief the applicable Oklahoma statute is quoted verbatim. This statute is in nowise comparable to the Utath statute. The Oklahoma statute provides that "any person, corporation or co-partnership, who, shall, under contract express or implied, with the *owner* of any leasehold for oil or gas purposes, or the *owner* of any gas pipe line or oil pipe line or with the trustee or agent of such owner, perform labor or *furnish materials,* machinery, and oil well *supplies* used in the digging, drilling, torpedoing, completing, operating or repair of any gas well, shall have a lien upon the whole of such leasehold . . . for which *materials* and *supplies* were furnished." The Oklahoma statute includes *materials* and *supplies,* whereas the Utah statute does not. In the Utah statute the word *materials* is used, but the word *supplies* does not appear. That the two words are not synonymous is clearly indicated in the following decisions: *Willett*

v. Davis (Washington) 193 P2d 321, 329, where the court said:

> "We have always held that, within the purview of Rem. Rev. Stat., Sec. 729, the rental of equipment is neither labor performed nor materials furnished. Hall v. Cowen, 51 Wash. 295, 98 Pac. 670; Hurley-Mason Co. v. American Bonding Co., 79 Wash. 564, 140 Pac. 575. On the other hand, we are fully aware that equipment rental is lienable as *'supplies'* within the purview of Rem. Rev. Stat. Sec. 1159 * * * ."

and the case of *Clayton v. Bridgeport Machine Co.,* 33 SW2d 787, where the court stated:

> "Another question presented is whether a lien is given by the statute to secure the price or value of the rental of drilling tools. * * * Were the lien given only to secure labor and material, we would incline to the view that it would not cover the rental of tools. * * * The statute, however, also authorizes a lien to secure payment of machinery and *supplies* so furnished and used. We will not stop to inquire if the tools in question may properly be regarded as machinery. We think that tools such as these which are customarily used in the drilling of oil or gas wells under rental contract are *supplies* within the terms of the statute."

As to the lienability of the materials sold, we believe the correct rule is stated in the case of *Given v. Campbell,* 127 Kan. 378, 273 Pac. 442:

> "Now, it is perfectly obvious that if this well were drilled to completion, these articles would not become fixtures of the leasehold. They would constitute no part of the improvement of the property. They will be carried away and used on a second and third drilling job, and so on until they are worn out. Should appellee's

leasehold be subject to a lien for the payment of this rope, belt, wrench, hammer, pail, sand line and drilling line? If so, will plaintiffs' leasehold alone be subject to a lien therefore, or will all the leaseholds in the community on which these chattels are successively used until they are worn out be likewise subjected to appellant's lien claim for their payment? Why should a vendor's lien be granted on an interest in reality for the price of a wrench, a hammer, or a water pail purchased for the use of the driller of an oil and gas well when no such lien was granted for the purchase price of a carpenter's hammer, a plumber's wrench, or a plasterer's water pail similarly used in the construction of any other improvement in realty? * * * "

To the same effect see *Albuquerque Foundry & Machinery Works v. Stone* (N.M.) 286 Pac. 157.

(All emphasis appearing herein has been added.)

Respectfully submitted,

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