

1959

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

Utah Supreme Court

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U.S. DIST. COURT
AUG 6 1959

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In the Supreme Court of the State of Utah

STANTON TRANSPORTATION COM-
PANY, a corporation,

Plaintiff,

CONTINENTAL EMSCO COMPANY,
a division of YOUNGSTOWN SHEET
AND TUBE COMPANY, a corpora-
tion,

Plaintiff and Respondent.

Case No.
8950

vs.

MARVIN DAVIS, JACK DAVIS, JEAN
DAVIS, and JOAN PRESTON, part-
ners, doing business under the firm
name of DAVIS OIL COMPANY,

Defendants and Appellants.

BRIEF OF APPELLANTS

FILED
AUG 27 1959

Clerk, Supreme Court, Utah

ANTHONY F. ZARLENGO

CLINTON D. VERNON

Attorneys for Defendants and Appellants

IN THE
SUPREME COURT OF THE STATE OF UTAH

STANTON TRANSPORTATION CO.,
(a corporation),

Plaintiff and Appellant,

vs.

MARVIN DAVIS, et al doing busi-
ness as DAVIS OIL CO.,

Defendants and Respondents.

FILE

MAY 4 - 1959

Clerk, Supreme Court, Ut

No. 8951

ADDITIONAL AUTHORITIES TO BE IN-
SERTED IN BRIEF OF DAVIS OIL COMPANY.

At the end of the first full paragraph on page 23 add the following authorities supporting our contention that charges for transportation of equipment such as a drilling rig are lienable:

Bangor

In the case of Roofing & Sheet Metal Co. v. Robbins Co., 151 Me. 145, 116 A2d 664, the court held:

"We regard the item for transportation as in the same category as the items above discussed. /profit overhead, taxes and insurance/ In and of itself, it is nonlienable. If materials in place at the construction site have a greater value because they have been transported there, the lien will reflect the enhanced value of the material. Otherwise, transportation is not a factor to be considered."

See also 36 Am Jur 62, Mechanics' liens Sec. 76.

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Case No.
8950

BRIEF OF APPELLANTS

PRELIMINARY STATEMENT

The parties will sometimes be designated in this brief as follows: Marvin Davis, Jack Davis, Jean Davis and Joan

Preston, partners doing business under the name of Davis Oil Company, as "Davis"; Continental Emsco Company, a division of the Youngstown Sheet and Tube Company, as "Emsco"; and Stanton Transportation Company as "Stanton." The Walker-Wilson Drilling Company will sometimes be referred to as "Walker-Wilson" or as "driller."

STATEMENT OF THE CASE

This Appeal is from the judgment of the trial court holding that Emsco is entitled to a mechanic's lien in the amount of \$4,158.64, for rock bits rented by the driller (Walker-Wilson) through Emsco, as agent, from the manufacturer.

STATEMENT OF FACTS

References to the Clerk's files in this brief are designated "R." The transcript of the hearing held September 20, 1957, is designated "TRA" and the transcript of the hearing held November 5 and 6, 1957, is designated "TRB".

Davis Oil Company is a partnership consisting of Marvin Davis, Jack Davis, Jean Davis and Joan Preston. It is the owner of an oil and gas leasehold interest in the following lands:

The Northeast Quarter of the Northeast Quarter of Section 27, Township 41 South, Range 24 East of the Salt Lake Meridian.

On December 19, 1956, Davis entered into a contract with Walker-Wilson Drilling Company for the drilling of an oil

well on the above-described lands. (TRB pp 22-24, and Plaintiffs' Exhibit No. 37).

Walker-Wilson ordered rock bits through Emsco, a supply company which, in this instance, operated as an "agent to distribute * * * equipment required to drill an oil or gas well" (TRA p. 39). The bits were manufactured by Hughes Tool Company (TRA p. 43). Emsco, a division of the Youngstown Sheet and Tube Company, charged the manufacturer of the bits a commission for "handling the billing of the bits and the actual receiving of the funds to pay for them" (TRA p. 44).

One of the "Conditions of Sale and Trade Customs" printed on the reverse side of Emsco's invoices is the following:

Rock bits and allied products are never sold but are leased. When the original cutter teeth and/or bearings have served their useful life, the user will surrender them to the Manufacturer upon request. In accepting delivery, the user agrees not to surrender any of the tools mentioned above to other than a duly authorized representative of the Manufacturer.

(See Plaintiffs' Exhibits P through Z, and A-1 through A-24; and TRA pp. 55-56). A similar statement is printed on order blanks of the Hughes Tool Co. (See Plaintiffs' Exhibit C and TRA p. 62).

The rock bits did not become part of the improvement or well, and the claim of Emsco is only for the service given by the rented bits (TRA pp. 63-64).

Walker-Wilson did not complete their drilling contract, and Davis had to go in and complete the work. Davis suffered

damages running into several thousands dollars over and above the contract price (TRB p. 82).

STATEMENT OF POINT RELIED ON

POINT I

ONE WHO RENTS EQUIPMENT FOR USE IN THE DRILLING OF AN OIL WELL IS NOT ENTITLED TO A LIEN FOR SUCH CHARGES.

ARGUMENT

POINT I

ONE WHO RENTS EQUIPMENT FOR USE IN THE DRILLING OF AN OIL WELL IS NOT ENTITLED TO A LIEN FOR SUCH CHARGES.

The total recovered by Continental Emsco Company was for the rental of bits obtained by the driller from the Hughes Tool Company. Continental Emsco was to collect from the driller and pay over to the Tool Company the rents owing it for the use of the bits, and for this service Emsco was to receive a commission. No bits were sold or otherwise transferred by the Tool Company or Emsco and upon completion of their use the bits were returned to the Tool Company for future use.

It is our position here that the language of the pertinent Utah Statute, 38-1-3, UCA 1853, to the effect that one is entitled to a lien for work done or materials furnished does not

include one, who, on behalf of another, rents equipment which is returned after its use.

In *Wilkinson v. Pacific Mid-West Oil Co.*, 152 Kan. 712, 107 P. 2d 726, wherein a mechanic's lien was sought for the rental of certain oil-well casing, the Supreme Court of Kansas in affirming the judgment of the trial court, which had sustained a demurrer to the petition, stated as follows:

It is well settled that the rental or the value of the use of machinery cannot be the basis for the claim of a mechanic's lien.

In *Road Supply & Metal Co. v. Bechtelheimer*, 119 Kan. 560, 240 P. 846, this court said: 'The rent or value of the use of machinery, tools, and equipment used in constructing public work is neither labor nor material within the meaning of our statutes pertaining to mechanics' liens.' Syl. par. 2. See, also, *Marion Machine Co. v. Allen*, 119 Kan. 770, 772, 241 P. 450; *Given v. Campbell*, 127 Kan. 378, 273 P. 442; *Fees v. Ritchey*, 136 Kan. 221, 14 P.2d 652; *Bridgeport Machine Co. v. McKnab*, 136 Kan. 781, 18 P.2d 186."

The same court stated in the cited case of *Bridgeport Machine Co. v. McKnab*, 136 Kan. 781, 18 P.2d 186, 188:

We see no reason in deviating from the earlier position of this court as to rent for the use of tools. It was held in *Road Supply & Metal Co. v. Bechtelheimer*, 119 Kan. 560, 240 P. 846, that rent for the use of tools was neither labor nor material within the meaning of the mechanic's lien statute. It was held in *Arkansas Fuel Oil Co. v. McDowell*, 119 Okl. 77, 240 P. 717, that the furnishing of fishing tools in the drilling of an oil or gas well on rental contract is neither labor nor material within the purview of the Oklahoma lien statute."

See also *American Nat. Bank of Hutchinson v. Central Const. Co.*, 160 Kan. 400, 163 P. 2d 369.

These cases are in accord with the general view that rental charges for equipment used do not fall within the category of either "labor" or "materials furnished" as used in general mechanics' lien laws. See *John H. Black Co. v. Surdam Holding Corporation*, 250 N.Y.S. 17; *Steele & Lebby v. Flynn-Sullivan Co.*, 245 Ky. 772, 54 S.W. 2d 325; *Mann v. Schnarr*, 228 Ind. 654, 95 N.E. 2d 138; *Willett v. Davis*, 30 Wash. 2d 622, 193 P.2d 321; *Sundberg v. Boeing Airplane Co.*, Wash., 328 P.2d 692.

It was also indicated in *Clayton v. Bridgeport Mach Co.*, Tex., 33 S.W. 2d 787, that the rental of "tools" used in the drilling of an oil well was neither labor nor material, and had the Texas statute been limited thereto, as is the Utah statute, the court would have denied the lien for such charges. However, in that the Texas statute also included the term "supplies" the court extended the lien to charges for the rental of drilling tools as falling within that category.

We do not believe that any extended argument on this point is necessary. The reason and logic of the above cited authorities disallowing liens for rental charges on equipment used and then returned for future use is clear. The equipment, or as in this case, the bits, are not materials consumed within any improvement and do not at any time become the property of the owner or enhance the value of his property. It is undoubtedly true that such rental charges could and should be the subject of contractual liability, but this theory should not be extended and written into mechanic's lien laws which are

to protect those who have expended their product—whether it be labor or material.

CONCLUSION

We submit that the Utah mechanic's lien statute does not grant a lien for the services of rented equipment such as rock bits which were used in drilling the well here involved. The judgment of the trial court should be reversed.

Respectfully submitted,

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