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W. R. Eddington v. William R. Clyde : Brief of Appellant

Utah Supreme Court

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**In the Supreme Court of the
State of Utah**

W. R. EDDINGTON,
Defendant and Appellant,

vs.

WILLIAM R. CLYDE,
Plaintiff and Respondent.

FILED

OCT 5 - 1959

Clerk, Supreme Court, Utah

CASE

NO. 9118

APPELLANT'S BRIEF

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In the Supreme Court of the State of Utah

W. R. EDDINGTON,
Defendant and Appellant,

vs.

WILLIAM R. CLYDE,
Plaintiff and Respondent.

CASE
NO. 9118

APPELLANT'S BRIEF

STATEMENT OF THE CASE

Respondent herein filed an action against the appellant and Eddington Canning Company, a corporation, wherein the complaint was set forth in two counts. Count No. 1 was an action against Eddington Canning Company, Inc., a corporation, on an account for produce sold and delivered. Count No. 2 was an action against appellant, W. R. Eddington, personally, based upon an alleged guarantee purported to have been given by defendant, W. R. Eddington, to the plaintiff, guaranteeing to the plaintiff payment of the account by Eddington Canning Company, Inc., a corporation. The appellant denied ever having made a personal

guarantee to the plaintiff. Motions for summary judgment were made by the plaintiff against the defendant, Eddington Canning Company, Inc., a corporation, and against the defendant, W. R. Eddington. A motion for summary judgment was made by the defendant, W. R. Eddington, against the plaintiff.

The documents upon which the plaintiff relies to constitute a guarantee on the part of the appellant (Plaintiff's Exhibit "1") is set out as follows, including the letterhead:

"Eddington Canning Company, Inc.
Phone HU 9-5611 Springville, Utah

March 6, 1957

Mr. William Clyde
Springville, Utah
Dear Bill:

This is to certify that I, personally, will guarantee you payment for any tomatoes you raise and deliver for us, or any other crop contracted for, on the day contract specifies for payment.

Very truly yours,

EDDINGTON CANNING COMPANY
/s/ W. R. Eddington
W. R. Eddington

WRE/n"

In support of the motion for summary judgment made on behalf of appellant an affidavit was filed (Tr. 39) signed by the appellant wherein it was stated that appellant, by signing the foregoing Exhibit 1, signed said exhibit in his capacity as president of said corporation and signed for the said corporation and that the appellant intended to bind

only the assets of the corporation to secure any obligation due to the plaintiff; that appellant did not intend to bind his personal assets to secure any obligation owed by the canning company to the plaintiff.

The Court granted the motion for summary judgment against the appellant and in favor of the plaintiff.

STATEMENT OF POINTS

POINT I

PLAINTIFF'S EXHIBIT "1" IS A GUARANTEE BY EDDINGTON CANNING COMPANY TO THE PLAINTIFF AND AS A MATTER OF LAW IS NOT A GUARANTEE OF APPELLANT, W. R. EDDINGTON, TO PAY PLAINTIFF IF THE CORPORATION FAILED TO PAY.

POINT II

THE TRIAL COURT ERRED IN FAILING TO GRANT APPELLANT'S MOTION FOR SUMMARY JUDGMENT AND IN GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT.

ARGUMENT

POINT I

PLAINTIFF'S EXHIBIT "1" IS A GUARANTEE BY EDDINGTON CANNING COMPANY TO THE PLAINTIFF AND AS A MATTER OF LAW IS NOT A GUARANTEE OF APPELLANT, W. R. EDDINGTON, TO PAY PLAINTIFF IF THE CORPORATION FAILED TO PAY.

This appeal involves only one point of law and that is whether or not as a matter of law the appellant is bound

as a guarantor by reason of Plaintiff's Exhibit "1". It will be noted that Plaintiff's Exhibit "1" is written upon the corporate stationery which bears a corporate letterhead and that the letter is signed "Eddington Canning Company, W. R. Eddington." The rule is stated in 13 Am. Jur. Page 994 as follows:

"In determining whether a corporate director, officer or agent is liable upon a corporate contract, the particular form of the promise in, or signature to, such contract is of prime importance in deducing the intention in such respect with which the contract was executed. A correct form of signature which is uniformly regarded as imposing no personal liability upon the officer signing is that of a signature containing the corporate name, followed by the words 'per' or 'by' which, in turn, is followed by the name of a corporate officer. When the word 'per' or 'by' is followed by the name of more than one officer, however, the case is not so clear."

Two cases have been found that are almost on all fours with the present case and which cases are still the law in their particular states. The first case is *St. Joseph Valley Bank v. Napoleon Motors Company, et al.* (Mich.) 202 N. W. 933. In this case the defendant, Napoleon Motors Company, a corporation, manufactured trucks. Frank Trude was the vice-president and W. G. Rath, its secretary and treasurer. In selling trucks it received notes secured by chattel mortgages. It entered into a contract with the plaintiff bank by which plaintiff agreed to and did purchase such paper. The contract provided that, if any of the paper was not paid at maturity, defendant corporation (therein called the seller) was to pay the same within ten days. The agreement was prepared by plaintiff and after

signing was sent to Traverse City (resident of the defendant) for form of guaranty, also written thereon, to be signed. The guaranty and the signatures were as follows:

"Full performance of seller's obligations under this contract is individually guaranteed by the following persons: Napoleon Motors Company, Frank Trude, Vice Pres., W. G. Rath, Secy.-Treas."

The notes not being paid as required, plaintiff sued defendant corporation and Trude and Rath, and had judgment in a cause tried without a jury. Trude and Rath appealed and the question was whether they were personally liable as guarantors.

The Court stated, Page 934:

"The right of the corporation to sign the guaranty is not questioned. It is said that this is an Indiana contract, to be governed by the laws of that state|. We think it unnecessary to determine that question, finding the later decisions of the courts of last resort of that state, so far as applicable, to be in line with the weight of authority, by which the question will be determined. There is a lack of harmony among the authorities on the question. This is recognized in *Second National Bank v. Midland Steel Co.*, 155 Ind. 581, 58 N. E. 833, 52 L.R.A. 307, where earlier decisions of that state are reviewed.

"If the guaranty had been signed by "Frank Trude, Vice Pres.," and "W. G. Rath, Secy.-Treas.," and without the name of the corporation, then, considering the language of the guaranty, particularly "persons" and "individually," it might be held, under many authorities, that the signers were bound personally, and that the words "Vice Pres." and "Secy.-Treas." were merely *descriptio personae*. *Second National Bank v. Mid-*

land Steel Co., *supra*; *Reever v. First Nat. Bank of Glassboro*, 54 N. J. Law, 208, 23 A. 953, 16 L.R.A. 143, 33 Am. St. Rep. 675. In many cases somewhat similar to the supposed case, the writing being deemed ambiguous, evidence to show the intention of the parties has been held admissible. 3 Cook on Corporations (6th Ed.) Sec. 724; *Second Nat. Bank v. Midland Steel Co.*, *supra*.

“(1) But here the corporation alone, Napoleon Motors Company, signed the guaranty. It could sign only by its officer or officers. We cannot ignore its name so written. And without the signing of its officer or officers its signature would be incomplete. The undertaking so signed must be taken conclusively to be that of th corporation.” (Cases Cited)

“Had the word “by” or “per” or “pro” been used before the signature of either or both officers, it would have added nothing to the certainty of what is expressed. *Wright v. Drury Petroleum Corp.* (Mich.) 201 N. W. 484, and cases there cited. The words “persons” and “individually” and that the signing added nothing to the contract are not important here, for there is but one signature on the paper, the signature of the corporation, and hence no ambiguity permitting parol evidence on the question. *Liebseher v. Kraus*, *supra*; *Falk v. Moebs*, *supra*; *Williams v. Harris*, *supra*.”

The other case in point is *Bankers' Trust Company, et al. v. Dockham, et al.* (Mass.) 181 N. E. 174. This is a case that involved a covenant not to “become interested in the publishing of any directory in the textile field, which shall compete for a period of ten years with the present publications of Davision Publishing Company.” This paragraph concluded:

"And Stevens Dockham, Lillian M. Dockham and William Martin, being the principal stockholders in the Seller's corporation, do agree to this same condition for themselves personally."

The agreement was signed "Dockham Publishing Company by Stevens Dockham, Pres., Lillian M. Dockham, Treas."

Subsequently Stevens Dockham began to compete with the publications of the plaintiff and this action was filed. The trial court found:

"I find as a matter of law that since it is apparent from the contract that Stevens Dockham signed the contract only in his capacity as president of the Dockham Publishing Company, which plainly appears from the signature on the contract, that he is not bound individually by any of the terms of the contract and that the agreement not to compete contained in paragraphs five and six of the contract are not binding on him individually."

The appellant court stated:

"The contract as executed did not bind Stevens Dockham as an individual."

See also *Anderson v. Davis*, 234 S. W. 2d 368; *New England Electric Company v. Shook* (Colorado) 145 P. 1002.

It is clear that Exhibit "1" was signed in the only manner in which a corporation may sign, which is through an authorized agent, and in this particular case through the president of the corporation; that there can be no personal liability on the part of the president by reason of having signed such a document. It is further clear from the affi-

davit of the appellant that if there be any ambiguity in Exhibit "1" whereby the court might admit evidence to explain the ambiguity, that the intent is clearly shown by such affidavit (Tr. 39) that appellant did not intend to personally bind himself. The affidavit on file of the plaintiff (Tr. 41) confirms that the plaintiff had no oral discussions with an agent of the appellant but that plaintiff had a discussion with an agent of the Eddington Canning Company, Inc., a corporation, which would not be admissible evidence as far as appellant is concerned.

POINT II

THE TRIAL COURT ERRED IN FAILING TO GRANT APPELLANT'S MOTION FOR SUMMARY JUDGMENT AND IN GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT.

From what has been said and the law applicable to Point No. I it is clear that the trial court erred in failing to grant appellant's motion for summary judgment and in granting plaintiff's motion for summary judgment against this appellant.

Respectfully submitted,

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