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

Utah Supreme Court

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In the
Supreme Court of the State of Utah

FILED

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WILLIAM R. CLYDE,
Plaintiff and Respondent,

vs.

W. R. EDDINGTON,
Defendant and Appellant.

Clerk, Supreme Court, Utah
Case No.
9118

RESPONDENT'S BRIEF

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In the Supreme Court of the State of Utah

WILLIAM R. CLYDE,
Plaintiff and Respondent,

vs.

W. R. EDDINGTON,
Defendant and Appellant.

Case No.
9118

RESPONDENT'S BRIEF

PRELIMINARY STATEMENT

The parties herein will sometimes be designated in this brief as follows: Plaintiff and respondent, William R. Clyde, as "respondent" or "Clyde;" defendant and appellant, W. R. Eddington, as "appellant" or "Eddington;" Eddington Canning Company, a corporation, as "Company." Reference to the record will be designated as "R." References to appellant's brief will be designated "A.B."

STATEMENT OF CASE

Plaintiff and respondent, William R. Clyde, was approached by a representative of Eddington Canning Company on or about March 6, 1957, with regard to entering into contracts with Eddington Canning Company, a corporation, under which Clyde would agree to sell farm produce to be grown during 1957 to the Company. At that time Clyde stated that due to the poor financial reputation of the Company he would not be willing to sell the produce to the Company unless he received a letter from W. R. Eddington personally guaranteeing payments under the contracts (R. 41). On March 6, 1957, Eddington executed and delivered to Clyde the following letter:

“EDDINGTON CANNING COMPANY, INC.

Phone HUnter 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.

Yours very truly,

EDDINGTON CANNING COMPANY

/s/ W. R. Eddington

W. R. Eddington

WRE/n”

(Emphasis added.)

(R. 34, 41, 44.)

Relying upon said letter Clyde entered into a "Canning Pea Contract" and a "Packers and Growers Official Tomato Contract" with the Company on March 8, 1957 (R. 34, 36, 37, 42). Pursuant to said contracts Clyde sold and delivered to Eddington Canning Company produce having a value of \$2,028.62, no part of which has ever been paid (R. 34, 42). Clyde would never have entered into the contracts nor delivered the produce to the Company if he had not received the letter from Eddington (R. 42).

Clyde brought action on November 10, 1958, praying for judgment against both the Company and Eddington personally for the value of the produce (R. 10). The trial court granted Clyde's motions for summary judgment against both the Company and Eddington and denied Eddington's motion for summary judgment (R. 46, 48, 50, 52, 54). The Company, which is insolvent, has not appealed. The judgments were based upon the pleadings, admissions (R. 28), stipulation as to facts (R. 34) and affidavits filed by both the appellant (R. 39) and the respondent (R. 41). There is little or no dispute as to the facts in this case and the only question before this Court as noted on pages 3 and 4 of the appellant's brief is whether the trial court erred in holding that Eddington was personally bound by the letter agreement as a matter of law.

STATEMENT OF POINTS

POINT I

THE LANGUAGE IN THE GUARANTEE EXECUTED BY EDDINGTON CLEARLY SHOWS

THAT HE INTENDED TO BIND HIMSELF PERSONALLY.

POINT II

EDDINGTON'S PERSONAL LIABILITY IS NOT CHANGED BECAUSE OF THE FORM OF SIGNATURE ON THE GUARANTEE.

POINT III

EDDINGTON CANNOT RESORT TO PAROL EVIDENCE TO SHOW THAT HIS INTENT WAS DIFFERENT FROM THAT MANIFESTED BY THE WRITTEN INSTRUMENT.

ARGUMENT

POINT I

THE LANGUAGE IN THE GUARANTEE EXECUTED BY EDDINGTON CLEARLY SHOWS THAT HE INTENDED TO BIND HIMSELF PERSONALLY.

As indicated above, and in appellant's brief, the only question before this Court is whether as a matter of law the guarantee executed by Eddington bound him personally to pay for produce which Clyde subsequently sold and delivered to the Company in reliance on said guarantee. It is elemental horn book law that in construing such an agreement, the intention of the parties as manifested by the instrument itself is the controlling factor in determining

whether the obligation is that of the corporation or is an individual obligation of the person who makes it. Where the intent is clear and unambiguous, as in the instant case, resort cannot be made to parol evidence to alter that intent.

The language in the instrument clearly shows that Eddington intended to bind himself personally to pay for any produce delivered by Clyde to the Company. If he did not so intend, the language is such as to cause anyone reading the instrument to believe that this was his intent. This is especially true in the instant case in view of the fact that the letter was furnished to Clyde after he had refused to enter into agreements to sell produce to the Company until and unless he received a letter from Eddington personally guaranteeing payment.

The letter begins "Dear Bill:" Eddington then states "This is to certify that *I, personally* will guarantee you payment * * *" It is impossible to state more clearly an intent to be bound personally. The personal pronoun "I" is certainly not a term normally used in making reference to a corporate body. That it was not so intended is emphasized in the instant case by the fact that the pronoun "I" is followed by the adjective "personally." This is a term very commonly used to distinguish an individual from a corporate body. It would seem that under no stretch of the imagination would the use of the two words together indicate anything other than the fact that Eddington personally guaranteed payment. It is also significant that when Eddington makes reference to the delivery of the produce he states that "** * * I, personally, will guarantee you payment for any tomatoes you raise and deliver for us,*

* * *.” By using the pronoun “us” he makes reference to the corporation and himself as distinguished from “I personally” who makes the guarantee.

To adopt the appellant’s contention that the writing was the guarantee of the corporation and not of Eddington personally would render the writing meaningless. It would be unreasonable to construe the guarantee as being intended to make the Company a guarantor of its own debt. The natural import of the language used evinces an intention to assume personal liability as a guarantor and there is nothing to show an intention to make the corporation its own guarantor. See *J. L. Mott Iron Works v. Clark*, 87 S. C. 199, 69 S. E. 227. A guarantee is by its very definition a promise to pay the debt of another, not a promise to pay one’s own debt.

Respondent submits that the language of the guarantee is clear and unambiguous and that there can be no question but that Eddington intended to be bound personally.

POINT II

EDDINGTON’S PERSONAL LIABILITY IS NOT CHANGED BECAUSE OF THE FORM OF SIGNATURE ON THE GUARANTEE.

The appellant contends that Eddington is not personally liable because the name of the Company appears before Eddington’s signature. Four cases are cited as authority for this proposition; *Bankers’ Trust Company, et al. v. Dockham, et al.*, 279 Mass. 199, 181 N. E. 174; *Anderson*

v. *Davis*, 34 Tenn. App. 116, 234 S. W. 2d 368; *New England Electric Company v. Shook*, 27 Colo. App. 30, 145 Pac. 1002 and *St. Joseph Valley Bank v. Napoleon Motors Company, et al.*, 230 Mich. 498, 202 N. W. 933. In all of these cases, the court looked to the form of the signature as one of the factors to be used in determining whether the person was signing in a representative capacity or individually. The signatures on the documents in question in these cases in the order in which the cases are named above were as follows:

- (a) "Dockham Publishing Company
By Steven Dockham, Pres.
Lillian M. Dockham, Treas."
- (b) "Central Coal Company
By E. J. Davis, President"
- (c) "The Akron Gas & Electric Co.,
R. A. Shook, President.
H. C. Black, Secretary."
(With corporate seal affixed.)
- (d) "Napoleon Motors Co., Frank Trude, Vice-
President, W. G. Rath, Secretary."

Each of the signatures clearly showed that the person signing was acting only in a representative capacity and not individually. In all of the cases the signature is followed by the title or office of the person signing. In two of the cases the name of the corporation is followed by the word "By." In at least one of the cases the corporate seal was affixed to the document in question. The courts relied on these factors in deciding that the instruments did not personally bind those who executed them.

In the instant case there is nothing in the form of signature or any other part of the instrument which indicates an intent to sign in a representative capacity. None of the elements relied on by the courts in the cases cited by appellant to show such intent are present here. If Eddington's signature had been preceded by the word "By" or followed by "President" there may have been some ambiguity but this is not the case.

Appellant cites no cases and we have found none where an individual is relieved of personal responsibility under an instrument similar to the one in question. On the other hand, there are a number of courts that have considered similar guarantees that have held the person executing the instrument personally liable. The case of *Main Red Granite Co. v. York*, 89 Me. 54, 35 Atl. 1014, is very similar to the instant case. There, the plaintiff had refused to deliver coal to the Machiasport Company unless it obtained a personal guarantee from the defendant. The defendant delivered the following letter to plaintiff's manager:

" 'Dear Sir: Mr. Pattengall advises me that he is in need of about \$200 worth of Red Beach stock. Kindly fill such orders as he may give you, and I will attend to the payment of same as they become due. Geo. W. York, Treas. of the Machiasport Granite Company.' "

The Machiasport Company failed to pay and plaintiff brought action to recover from the defendant. The defendant urged as a defense that the letter was not intended to

bind him personally. The court in holding for the plaintiff stated :

“* * * In *Douglass v. Reynolds*, 7 Pet. 115, Judge Story said that guaranties are of extensive use in the commercial world, upon the faith of which large advances are made and credits given, and care should be taken to hold the party bound to the full extent of what appears to be his engagement. And again, in *Lawrence v. McCalmont*, 2 How. 426, the same learned judge said: ‘We have no difficulty whatever in saying that instruments of this sort ought to receive a liberal interpretation. By a liberal interpretation we do not mean that the words should be forced out of their natural meaning, but simply that the words should receive a fair and reasonable interpretation, so as to attain the object for which the instrument is designed, and the purposes to which it is applied. We should never forget that letters of guaranty are commercial instruments, generally drawn up by merchants in brief language, sometimes inartificial, and often loose in their structure and aim; and to construe the words of such instruments with a nice and technical care would not only defeat the intention of the parties, but render them too unsafe a basis to rely on for extensive credits, so often sought in the present active business of commerce throughout the world. * * * If the language used be ambiguous, and admits of two fair interpretations, and the guarantee has advanced his money upon the faith of the interpretation most favorable to his rights, that interpretation will prevail in his favor; for it does not lie in the mouth of the guarantor to say that he may, without peril, scatter ambiguous words, by which the other party is misled to his injury.’”

In *Gavazza v. Plummer*, 53 Wash. 14, 101 Pac. 370, the court held the defendant personally liable under an instrument that provided:

“ ‘Spokane, Wash., May 3, 1906, I, W. H. Plummer, treasurer of the Spokane Showcase & Cabinet Company, do hereby agree with Mr. N. Gavazza that, in consideration of the subscription for five hundred (500) shares of the capital stock of the Spokane Showcase & Cabinet Company, I will, upon demand, accept a return of his stock and refund to him the money he has paid therefor, as follows: Two hundred and fifty dollars (\$250) within one year, and two hundred and fifty dollars (\$250) within eighteen (18) months after he shall exercise his option to return said stock. Notice of which shall be mailed in writing delivered to me. W. H. Plummer, Treas.’ ”

In so holding the court said:

“ ‘It is too well settled to need any reference to authorities to show that an agent may be the form of the promise and manner of his signature fix upon himself a personal liability.’ *Haverhill Mutual Fire Ins. Co. v. Newhall*, 1 Allen (Mass.) 130. The appellant has brought himself within this rule. The words of his undertaking, ‘I will, upon demand, accept a return of his stock and refund to him the money he has paid,’ would seem to indicate, irrespective of the application of the rule, that it was his purpose and intention to become personally bound, at least to lead respondent to infer (as respondent testified) that the obligation was personal. The addition of ‘Treas.’ to his signature neither adds to nor detracts from that obligation. It is simply, as the courts say, ‘*descriptio personae*.’ If it is desired to escape personal liability in the contract of an agent or other representative, the intention so to do

must be expressed in clear and explicit language;
otherwise a personal obligation arises. * * *”

Also see the following cases where persons executing various instruments were held personally liable under signatures as indicated: *Schwab v. Getty*, 145 Wash. 66, 258 Pac. 1035

“Yakima Shoe Co.
Geo. A. Getty, Pres.
P. S. Summers, Sec.”

Way v. Lyric Theater Co., 79 Wash. 275, 140 Pac. 320

“Lyric Theater Company.
Bert Muma
Theodore Peterson
James Anderson
G. H. Mueller.”

and *Moore v. Webster*, 191 Wash. 394, 71 P. 2d 369

“Charleston Super Service Inc.
Avis Webster.”

In *Murphy v. Reimann Furniture Company*, 183 Ore. 474, 193 P. 2d 1000, the plaintiff brought an action on a promissory note signed:

“Reimann Furniture Mfg. Co.
Rich L. Reimann
L. D. Reimann.”

Rich L. Reimann was president and L. D. Reimann was secretary-treasurer of the corporation. A default judgment was entered against the corporation. The two Reimanns claimed as an affirmative defense that the instrument was signed solely to cover an indebtedness of the corporation and that they signed in a representative capacity and had

not intended to bind themselves personally. The Oregon Supreme Court refused to allow defendants to introduce evidence to show that they had not intended to bind themselves personally holding that the instrument was unambiguous and stating:

“ ‘Any other rule would destroy the stability of written contracts. There is no language in the note which raises even a slight ambiguity or creates any doubt as to the meaning of the instrument, or that remotely suggests that the makers were acting for another.’ ”

We have found no Utah cases that are exactly in point, but, in *Starley v. Deseret Foods Corporation*, 93 Utah 577, 74 P. 2d 1221, the Utah Supreme Court held that where Grant Morgan, secretary of Deseret Foods, executed a note as follows:

“Deseret Foods Corp.
By Chas. N. Fehr, Pres.
Grant Morgan.”

there was no ambiguity and Morgan was held personally liable even though he claimed that he intended to sign only in a representative capacity.

It is submitted that there is no legal authority to support appellant's contention that because the name of the Company appears before Eddington's signature he is relieved of personal responsibility where the guarantee shows clearly and unambiguously that he intended to be bound personally.

POINT III

EDDINGTON CANNOT RESORT TO PAROL EVIDENCE TO SHOW THAT HIS INTENT WAS DIFFERENT FROM THAT MANIFESTED BY THE WRITTEN INSTRUMENT.

Appellant states in his affidavit that in executing the guarantee he intended to bind only the assets of the Company and did not intend to give a personal guarantee (R. 39). The law has long been settled that where the language in a written instrument is clear and unambiguous, as in the instant case, resort cannot be made to parol evidence to alter its terms. *Garrett v. Ellison*, 93 Utah 184, 72 P. 2d 449, 20 Am. Jur. 958, Evidence § 1099. Although appellant may have had some other intent, he is bound by his intent as manifested by the written instrument.

CONCLUSION

The guarantee executed by Eddington is clear and unambiguous and binds him personally as a matter of law. No genuine issue exists as to any material fact and the Trial Court acted properly in granting respondent's motion for summary judgment.

Respectfully submitted,

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