

1961

National Finance Company of Utah v. Carlos J. Valdez : Petition for Rehearing and Brief in Support Thereof

Utah Supreme Court

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Richard C. Dibblee; Counsel for Appellant;

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Case No. 9137

IN THE SUPREME COURT
of the
STATE OF UTAH

NATIONAL FINANCE COMPANY
OF UTAH,

Plaintiff and Respondent,

—vs.—

CARLOS J. VALDEZ,

Defendant and Appellant.

FILED

MAR 7 - 1961

Clerk, Supreme Court, Utah

UNIVERSITY OF UTAH

JUL 10 1967

PETITION FOR REHEARING
AND
BRIEF IN SUPPORT THEREOF

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NATIONAL FINANCE COMPANY
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PETITION FOR REHEARING
AND
BRIEF IN SUPPORT THEREOF

PETITION FOR REHEARING

COMES NOW Appellant and respectfully petitions this honorable Court to vacate the Order of the Court affirming the judgment and to reverse said judgment or to grant a rehearing. This petition is based on the following grounds:

POINT I.

THIS COURT ERRED IN HOLDING THERE WAS ONLY ONE ISSUE PRESENTED TO THE COURT BELOW.

RICHARD C. DIBBLEE
*Counsel for Defendant and
Appellant*

530 Judge Building
Salt Lake City, Utah

I hereby certify that I am the attorney for the appellant, petitioner herein, and that in my opinion there is good cause to believe the judgment objected to is erroneous and that the case ought to be re-examined as prayed for in said petition. Dated this 6th day of March, 1961.

RICHARD C. DIBBLEE

BRIEF IN SUPPORT OF PETITION
FOR REHEARING

ARGUMENT

POINT I.

THIS COURT ERRED IN HOLDING THERE WAS ONLY ONE ISSUE PRESENTED TO THE COURT BELOW.

The defendant respectfully submits the opinion rendered by this court is erroneous in two specific instances.

The first is the ruling by the court that the pretrial order and stipulations of counsel presented one sole

issue to be determined by the court below. The second is the ruling by the court that the pretrial order stipulations and admissions of counsel admitted the allegations of plaintiff's complaint and the essential elements of fraud.

With respect to the first of these rulings, the court ruled that the sole issue presented to the court below was whether or not plaintiff was entitled to a judgment on his pleadings or should he have instituted another type of legal action. In other words this court is ruling the sole issue presented to the court below was a legal issue concerning the correctness of the type of pleadings filed in the case. This ruling, of course, is not supported by the record.

The pretrial order states the issue to be whether or not the obligation sued upon was dischargeable by the bankruptcy proceedings in view of the exemption provisions of the act. In other words, was the obligation sued upon by plaintiff a liability for obtaining money or property by means of false pretenses or false representations. If not then the obligation was discharged.

It is remarkable how this very simple issue and statement by the court has become so misconstrued and misinterpreted first by counsel for plaintiff and now by this court. We respectfully submit the legal defense concerning the type of action was not the controlling issue in this case. The pretrial judge did not so rule and there is no basic reason why this court should so rule. The main issue was the applicability of the exemption provisions of the Bankruptcy Act and whether

or not the plaintiff could prove his obligation was included within said provision. To attempt to restate this issue, or to enlarge upon or change its meaning is merely permitting the plaintiff to secure a judgment that is not supported by the record.

This court in its opinion also ruled the essential elements of fraud had been admitted by defendant. While such an admission would be rather useless if the allegations of the complaint had been admitted, we respectfully submit such a ruling is not supported by the record.

Again an examination of the pretrial order will fail to disclose any statement by the court or counsel that the essential elements of fraud are admitted. We submit that construction of the pretrial order as a confession of fraud is an erroneous interpretation of the express language of the order.

An examination of the record of the pretrial conference will fail to disclose wherein counsel was admitting the essential elements of fraud to the court. The only stipulations of counsel concerned the incompleteness of the financial statement and the proposed testimony of the plaintiff's witness. How can these two statements be construed as an admission of the essential elements of fraud?

At the hearing before the court below counsel for both sides discussed the legal question concerning the

pleadings and the type of action required in these cases, and presented their theories. But this was not an admission by defendant that he was abandoning all other defenses to this case including the right to have the plaintiff sustain its burden of proof. To so hold would do violence to the purpose and understanding of counsel at said hearing and deprive defendant of his fundamental right to have the important issues of this case determined on their merit.

The court will also note that the allegations in plaintiff's complaint do not contain all of the essential elements for actionable fraud. In view of this fact how could the defendant admit something that is not contained in the complaint?

We respectfully submit that to permit this plaintiff to secure a judgment without sustaining his burden of proof is contrary to the law and is not rendering justice between the parties.

CONCLUSION

We submit that this Court in the particulars above set forth has interpreted the pretrial order, the stipulations and admission of counsel contrary to the record. The majority opinion permits a judgment to be entered in a case where the prevailing party failed to sustain its burden of proof.

We submit the judgment in this case should be reversed or a rehearing granted.

Respectfully submitted,

RICHARD C. DIBBLEE
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