1966

Utah Cooperative Association, A Utah Corporation v. Wilburn Dale Helm and Mariel. Helm, His Wife : Respondent's Brief

In the Supreme Court of the State of Utah

UTAH COOPERATIVE ASSOCIATION, a Utah Corporation,
Plaintiff and Appellant,

— vs. —

WLBURN DALE HELM and MARIE L. HELM, his wife,
Defendants and Respondents.

No. 10569

RESPONDENT'S BRIEF

Appeal from Judgment of the Fourth Judicial District Court
Utah County, State of Utah
The Honorable Joseph Nelson, Judge

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In the Supreme Court of the State of Utah

UTAH COOPERATIVE ASSOCIATION, a Utah Corporation,
Plaintiff and Appellant,

— vs. —

WLBURN DALE HELM and MARIE L. HELM, his wife,
Defendants and Respondents.

No. 10509

RESPONDENT'S BRIEF

STATEMENT OF THE NATURE OF THE CASE

This is an action for a Declaratory Judgment declaring and determining the meaning of a lease between the plaintiff as lessee and the defendants as lessors, or in the alternative, a reformation of said lease.

DISPOSITION IN LOWER COURT

Summary Judgment was granted upon the original complaint which sought an interpretation of the contract. Plaintiff then attempted to add a cause of action in refor-

mation by way of amending his complaint. The plaintiff's Motions to set aside the Summary Judgment, for permission to file an amended complaint, and for an Order requiring the plaintiff to make deposits in court pendente lite were denied. From the Summary Judgment and denial of the plaintiff's Motions, the plaintiff appeals.

RELIEF SOUGHT ON APPEAL

Defendant-Respondent seeks an affirmance of the lower court's Summary Judgment, with denial of leave to amend; and respondent seeks a dismissal of the action with prejudice.

STATEMENT OF FACTS

Respondent agrees with and adopts the statement of facts recited by appellant.

POINT NO. I

THE COURT WAS CORRECT IN GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND FOR REFUSING TO SET ASIDE SAID SUMMARY JUDGMENT FOR THE REASON THAT AS A MATTER OF LAW THE PLAINTIFF IS NOT ENTITLED TO RELIEF SOUGHT.

This is clearly an attempt to escape the consequences of a lease agreement by manufacturing a cause for breach. The plaintiff, Utah Cooperative Association, made a bargain which turned out to be unsatisfactory to them. The lease agreement was drafted by the appellant, Utah Cooperative Association. The lease agreement is nine (9) legal sized pages of technical language. It attempts to protect

the appellant from most imaginable disagreeable situations which might be encountered and for which the appellant might desire relief. It is clear that the contract is an integrated document and is intended to be the total embodiment of all agreements between the parties. Appellant now asserts that paragraph 7 of the lease entitled the plaintiff to the termination of its obligations, and they rely on the sentence in this paragraph which states "It is understood and agreed that **if by reason of any law, ordinance, or regulation** of properly constituted authority, or by injunction, Lessee is prevented from using all or any substantial or material part of the property herein leased as a service station for the sale and storage of gasoline and petroleum products, or **if the use of the premises** as a service station **shall be in any substantial or material manner restricted,** or should any governmental authority refuse at any time during the term or extension of this lease to grant such permits as may be necessary for the installation of reasonable equipment and operation of said premises as a service station, then the Lessee may, at its option, surrender and cancel its lease, remove its improvements and equipment from said property, and be relieved from the payment of rent or any other obligation as of the date of said surrender." (Emphasis added.)

(1) It is the respondent's position in this brief that this language is clear upon its face and that this clearly entitles the respondent to Summary Judgment. It necessarily also follows that if the language is clear, then there could be no material facts which could vary the terms of the agreement. The Parol Evidence rule would bar any conflicting affidavits or testimony. This is a matter so

fundamental that extensive discussion is unnecessary. See **Selections on Williston on Contracts** (Revised Edition) Sec. 639, p. 509.

That general rule is further supported by the facts of this case. The appellant drafted this contract which it now claims is "manifestly unconcionable". It was executed on May 5, 1961, and for three years, until 1965, the Appellant claimed the benefits and privileges of the lease without complaint and without claim that it had erred in its provisions. It does not complain today that a provision was actually left out in the drafting or reduction to writing of the agreement. It is merely complaining that it does not like the court's interpretation of the lease and that this is a "mistake" which entitles it to reformation.

To support its position, the appellant has emphasized the phrase starting with "or if the use of the premises as a service station shall be in any substantial or material manner restricted" as a basis for rescission, but the appellant neglects the frst part of the sentence which starts "It is understood and agreed that if **by reason of any law,** ordinance or regulation of properly constituted authority, or by injunction . . ." The ordinary rules of English usage require that the first of the sentence elaborates and explains, and limits the use of the term "restricted" as used in the appellant's argument. Thus, the import of the sentence is that a governmental **regulation** must be the limiting restriction. Even without reading this parenthetical phrase which certainly clarifies the intent of the sentence, the use of the word "restriction" itself couldn't be conceivably stretched in the English language to include the claim of the plaintiff. Restriction denotes "to confine, to keep

within limits", **Webster's New World Dictionary of the American Language, College Edition, 1954,** and connotes an interference. It would require an extreme twisting of the mother tongue to hold that the construction of a highway restricts, and therefore interferes with, the use of property two miles away bounded on another highway, especially when the construction of the new highway was contemplated by the parties in determining the price of the lease. The use of the word in this manner would destroy the value of the English language as a means of solidifying expectations by the use of contracts.

To interpret the phrase "in any manner restricted" as the appellant does, would open a Pandora's box, since the reasons for business failure are as many and varied as the numerous businesses which fail every year. Poor management, disagreeable customer relations, excessive cut throat competition, inefficiency, lack of modern equipment, and just plain disinterest in the business can cause its failuse; but by such a humble phrase as that in question the plaintiff would have the Lessor be an insurer of the appellant's business success and protect the appellant against its own inabilities.

The appellant further asserts that at the least the contract is ambiguous. It claims that any contract is vague, ambiguous or uncertain if the paragraph "does not say the service station lease may not be terminated if the highway construction greatly altered the flow of traffic away from the leased premises".

It is repectfully submitted that this position is ridiculous and untenable. To apply such a rule under the law of contracts would be to make every contract ambiguous,

uncertain or vague, and would flood the courts with litigation A written memorandum would have no sanctity or binding power. Every contractual promise could be sidestepped or parried by the legal threats that the contract didn't specifically provide for the particular unexpected or unmentioned contingency. It is respectfully submitted that no contract could be drafted which could provide for every contingency in a specific manner such as called for by the appellant.

The appellant's approach was recognized and rejected in the case of **Deseret National Bank vs. Dinwoodey,** 17 Utah 43, 53 Pac. 215 (1898). The issue in tht case was whether a guaranty contract was to cover past obligations as well as future, and the court required that this be stated in the contact and rejected the notion of ambiguity in the following language, at page 61:

> "Can any person say that there is a word in said instrument that makes the slightest reference, directly or indirectly, to any past transaction? To do so, it seems to us, would be to entirely disregard all rules of interpretation. We must therefore hold that, under the written instrument, the appellant was liable only for loans and advances made to the Burton-Gardner Company after the execution of the instrument, and not for pre-existing debts, in accordance with the terms of the contract."

It is respectfully submitted that paragraph 7 of the lease is clear on its face and in no way can be construed to permit the relief that the plaintiff seeks.

The appellant further asserts that the rule of **Bullough vs. Sims,** 16 Utah 2d 304, 400 P2d 20, 1965, is applicable

to the facts of this case. Respondent agrees fully with the rule of law there enunciated, but must respectfully point out to appellant that here there was no common understanding or a mutual course of action between the parties to vary the terms of the written agreement, and at no time has respondent done other than to abide by the very clear terms of the written agreement; and the respondent has insisted that appellant do the same.

Likewise, the respondent has no argument with the holding in **Bartell vs. Associated Dental Supply Company,** 114 C.A.2d 750, 251 P2d 16, (1952), where there was very obviously a drafting error in the lease. The appellant asserts that the facts of this case make it "sufficiently important not to resort to a guess as to what the lease means." It is respectfully submitted that in this case the hazards and uncertainty of a guess can be avoided by reading the lease agreement.

POINT NO. II

THE COURT WAS CORRECT IN DENYING PLAINTIFF'S MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT.

The respondent agrees that the right to make amendments in the ends of justice should be wholeheartedly and vigorously defended. Rule 15 of the Utah Rules of Civil Procedure authorizes and provides for such an amendment. Respondent must also agree that the appellant has the right to file independent or alternate claims in setting forth a cause of action. It is the respondent's position, however, that the Judge did not abuse his discretion in denying appellant leave to file an amended complaint because the ap-

pellant could not state a valid cause of action and could not validly reform the contract, and that, therefore, the interest of justice required a speedy termination of these harrassment proceedings against the respondents, Wilburn Dale Helm, and Marie Helm.

The appellant has asserted that by being permitted the right to seek an action for reformation that he could state a valid claim. However, by this assertion, the appellant has put himself in a very tenuous position which has striking legal implications. In the first complaint filed by the appellant, the appellant **relied on the contract,** asserting its validity and demanding that as a matter of law under the contract, the appellant was entitled to the relief sought. To buttress this claim for purposes of a summary judgment, the appellant filed the affidavit of Mr. Ervil Hansen, a representative of the appellant Utah Cooperative Association, who said "that said terms were intended by the parties to provide Plaintiff, Utah Cooperative Association, with the right to terminate the lease upon the occurrence of facts referred to in paragraph 5 of said complaint." Thus, the appellant chose to rely on the contract and to rely on the interpretation of the contract. This is a matter of law for the court.

It is readily conceded by the respondent that "reliance" by the appellant was doubtful at best and probably spurious. But by filing their complaint and signing their affidavit, the representatives of the appellant chose to rely on the legal interpretation of the contract. After the Court granted summary judgment in favor of the Respondent in this action, the Appellant suddenly discovered that it no longer wished to rely upon the contract and now it asserts

that it may legally and validly base a claim for rescission on its "mistake." It is respectfully submitted that although the appellant made what are alleged to be alternative claims, it cannot correct an admitted position, taken by affidavit, by later pleading a totally inconsistent cause.

Thus, it is submitted that the lower court did not abuse its discretion for the reason that the appellant could not state a valid cause of action in an action for reformation. There could be no fraud here where the appellant, after making the negotiations, drafted the contract. There is no assertion of a mistake of fact, no claim is made that a secretary left out a clause, a phrase, or paragraph of the contract. All that is asserted is that the appellant does not like the court's interpretation of the contract and that this was a "mistake."

This is, at best, a mistake of law. It is respectfully submitted that such is not a basis upon which to grant a reformation of a contract where one of the parties did not like the court's interpretation of the contract. This would open up another Pandora's box, and is the very basic heart of the rationale behind the Parol Evidence rule and the ordinary laws of contract interpretation. To destroy this stronghold of certainty would annihilate the business world, for no one could foresee and draft provisions for all contingencies. It would be a sad day when the contract would be for all practical purposes negotiated and drafted by litigation. It is respectfully submitted that the Appellant's position logically must lead to this conclusion.

The law applicable to this situation has been amply discussed in the case of **Deseret National Bank v. Din-**

woodey, cited above, and in the case of **Andrus v. Blazzard,** 23 Utah 233, 63 Pac. 888.

In the former case the plaintiff asserted that "[t]his reformation is asked for on the ground of mutual mistake on the part of the plaintiff and defendants, (p. 46) . . ."

The Supreme Court rejected the mutuality, but held on page 60:

> "If there was any mistake in the execution, it was a mistake of law on the part of the bank, but such a mistake the law cannot relieve against. A mistake of law is an erroneous conclusion as to the legal effect of known facts, and it is laid down as a general rule, by a very large list of auhorities, that such a mistake, unconnected with a mistake of fact, and where there are no indications of fraud, imposition, or undue advantage entering into the agreement, it will not be corrected by a court of equity. 2 Pom. Eq. Jur. Secs. 842-847; 5 Am. & Eng. Enc. Law, 635; **Hunt v. Rousamanier,** 1 Pet. 1; **Trigg v. Read,** 43 Am. Dec. 447; **Goodenow v. Ewer,** 16 Cal. 461; **Stoors v. Barker,** 10 Am. Dec. 316; **Bank of U. S. v. Daniel,** 12 Pet. 32; **Loftus v. Fisher,** (Cal.) 39 Pac. 1065.
>
> We are clearly of the opinion, therefore, that respondent is not entitled to have said written instrument reformed, either upon the theory of mutual mistake in its execution, or mistake of law, there being no fraud or deception charged in the pleadings, or attempted to be proven upon the trial, but that the parties must stand upon the instrument as it appears upon its face and the rights accruing therefrom."

This principle denying relief for a mistake of law was reaffirmed in the **Andrus** case. There the issue involved

the legal effect on a guardian of signing a note on behalf of his incompetent. The court said at page 254:

> "The guardian and beneficiaries of said note were fully aware of all the facts regarding the transaction; there was no mistake respecting the language of the note, but it was in the form and was executed in the manner intended. It is not claimed that there was any fraud or mistake of fact in the transaction. The substance of responden's claim is that he and the beneficiaries did not intend the note in legal effect should bind the guardian personally.
>
> When the facts are within the knowledge of both parties to a written contract, and the language used is such as they intended, a mistake as to the legal effect of the contract or that its legal effect is different from that intended, is not available as a defense at law, and is not ground for a reformation of the contract in a court of equity, and can not be shown by parol."

The court thereafter cited many authorities elaborating the reasons for the rule.

For the present case before this Court, it is submitted that this rule is directly in point and is compelling. The trial court had before it, not only the motion to amend, but also the facts and affidavits of the amended complaint. It would appear without unnecessary elaboration that the appellant could not state a cause of action after it had made its claim in the first complaint.

The trial court was not oblivious to this and also recognized the added hardship which the appellant seeks to impose by extending the litigation and withholding the payments from the respondent in order to wage the war on the

principle of economic submission. The court acted wisely and justly in its summary decision.

POINT NO. III

THERE IS NO NEED TO PAY THE DISPUTED LEASE MONEY INTO COURT PENDING DISPOSITION OF THIS MATTER.

The appellant bases its claim for the right to pay the lease money into court upon the theory that it legally would not be entitled to recover the money if it failed in its action.

It is submitted that this has no application to the facts presented here where the money is very obviously being paid under protest, and the Court could just as easily require repayment after decision without prejudice to the parties.

CONCLUSION

Based upon the foregoing principles, your petitioner requests that the Court find that appellant has no valid claim for relief and that his appeal be dismissed with prejudice.