

1991

Van Waters & Rogers v. Steven Regan Company, and Steven M. Harmsen : Brief of Appellant

Utah Supreme Court

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91-0586 CA

IN THE UTAH SUPREME COURT

VAN WATERS & ROGERS,


Appellee,

v.

STEVEN REGAN COMPANY, and
STEVEN M. HARMSSEN.

Appellant.

(SUBJECT TO ASSIGNMENT TO
UTAH COURT OF APPEALS)


Case No. 

91-0586-CA

BRIEF OF APPELLANT

Appeal from the Third District Court,
the Honorable Judge Pat B. Brian presiding,
Summary Judgment entered on May 4, 1990
in favor of Plaintiff/Appellee
Notice of Appeal filed May 31, 1990.

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CLERK SUPREME COURT,
UTAH

IN THE UTAH SUPREME COURT

VAN WATERS & ROGERS,

Appellee,

v.

(SUBJECT TO ASSIGNMENT TO
UTAH COURT OF APPEALS)

STEVEN REGAN COMPANY, and
STEVEN M. HARMSSEN.

Case No. 900284

Appellant.

BRIEF OF APPELLANT

Appeal from the Third District Court,
the Honorable Judge Pat B. Brian presiding,
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Notice of Appeal filed May 31, 1990.

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JURISDICTION OF CASE

JURISDICTION

This appeal is taken pursuant to Section 78-2-2(3)(j), U.C.A., 1953, as amended.

NATURE OF PROCEEDING

This is an appeal from a Summary Judgment entered in the Third Judicial District Court, on May 4, 1990, the Honorable Pat B. Brian presiding, in which Appellant, Stephen M. Harmsen, was found to personally liable for the debts of Steve Regan Company to Van Waters & Rogers, Inc.

STATEMENT OF ISSUES

When viewed in the light most favorable to Appellant Harmsen, the record shows that there is a dispute as to material facts and therefore does not support a Summary Judgment in favor of Appellees.

STANDARD OF REVIEW

The issue in this case is a matter of law and procedure,

challenging a summary judgment granted to the appellee and the appellate court is "free to reappraise the trial Court's legal conclusions" (Barber v. Farmer's Insurance Exchange, 751 P.2d 248 (Utah Ct. App. 1988); and the court must review the "facts in a light most favorable to the losing party below" giving "no deference to the trial court's conclusions of law which are reviewed for correctness." (Blue Cross & Blue Shield v. State, 779 P.2d 634 (Utah 1989).

DETERMINATIVE STATUTES

"(a) For Claimant. A party seeking to recover upon a claim, counterclaim or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof....

(c) Motion and proceedings thereon.... The judgment shall be rendered ... if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law....

(d) Case not fully adjudicated on motion....[the Court] shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy ... and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly...."

Utah Rules of Civil Procedure, Rule 56

STATEMENT OF CASE

NATURE OF CASE

This is a Civil matter in which Plaintiff, Van Waters & Rogers, Inc. (hereinafter Van Waters) brought suit against Steve Regan Company (hereinafter Steve Regan) and Stephen M. Harmsen, individually (hereinafter Harmsen) to collect certain trade debts owing them.

COURSE OF PROCEEDINGS BELOW

The parties stipulated to the liability of Steve Regan but Harmsen contested any personal liability for the debt. The Court granted Summary Judgment against the defendants in the amount of \$14,625.66 together with interest from December 13, 1988 and declared that Harmsen was personally liable for the debts of Steve Regan. Harmsen appeals.

STATEMENT OF FACTS

1. Harmsen was formerly an officer of Steve Regan.
2. During the time that Harmsen was an officer, Steve Regan incurred a debt to Van Waters.
3. Agents of Van Waters asked Harmsen to personally guarantee

the trade debts of Steve Regan by signing a guarantee form.

4. Harmsen refused to sign said guarantee because he had no desire or intention to personally guarantee the debts of Steve Regan.

5. When Harmsen refused to sign the personal guarantee, agents of Van Waters told him that he should sign the guarantee in his capacity as an officer of Steve Regan and that the guarantee would be limited to a guarantee on behalf of Steve Regan.

6. Having already received the goods from Van Waters, Harmsen signed the guarantee form by signing the words "Steve Regan Company - Stephen M. Harmsen - President" on the line labeled "signed" and did not write anything in the lines calling for a home address and Social Security Number.

7. Van Waters brought suit against Steve Regan and Harmsen, individually.

8. The parties stipulated in open Court that Steve Regan was liable to Van Waters.

9. Van Waters filed a Motion for Summary Judgment which was Opposed by Harmsen with his Affidavit setting forth under oath the facts concerning his intent not to personally guarantee the debt in his individual capacity.

10. In its reply Memorandum Van Waters conceded that Steve Regan was already obligated to pay Van Waters when Harmsen signed the guarantee form.

11. On May 4, 1990, notwithstanding the disputed issues of material fact, the Court granted Summary Judgment to Van Waters and

ruled that Harmsen was personally liable for the debt to Van Waters.

SUMMARY OF ARGUMENT

Summary Judgment is appropriately granted only when there are no issues of material fact in dispute (Bill Brown Realty, Inc. v. Abbott, 562 P.2d 191 (Utah 1975)). Harmsen has disputed his intention to personally guaranty the debts of Steve Regan. Considered in a light most favorable to Harmsen, the issues of intent and consideration are matters which are appropriate for trial. Therefore, no Summary Judgment is appropriate.

ARGUMENT

Where the parties were not in complete conflict as to certain facts (i.e. the parties agree that Harmsen signed the guarantee agreement) but the "understanding, intention, and consequences of those facts were hotly disputed, the matter was not appropriate for summary judgment and could only be resolved by a trial." (Sandburg v. Klein, 576 P.2d 1291 (Utah 1978)).

"It only takes one sworn statement to dispute averments on other side of controversy and create issue of fact, precluding summary judgment." (Holbrook Co. b. Adams, 542 P.2d 191 (Utah 1975)). Harmsen filed a sworn affidavit as to his intentions, in

opposition to the Plaintiff's motion for Summary Judgment, putting said fact at issue.

The conversation with Van Waters' agents in which they agreed to accept Harmsen's guarantee as an officer of Steve Regan only as well as the fact that the goods had been delivered previous to Harmsen's signing of the guarantee further puts the facts at issue, and creates a dispute which can only be adjudicated in trial.

The goods had been delivered to Steve Regan at the time Harmsen signed the guarantee, which raises the issue of consideration and must be adjudicated in trial.

In a case very similar to the instant case, the Plaintiff had brought suit against a third party (who had signed a guarantee document) to collect a debt owing by a different business. The defendant admitted that he had signed the document but disputed that he had intended to personally guarantee the debt and argued further that the goods had already been delivered at the time of the signing of the document. In that case the Utah Court of Appeals held that:

"A review of this evidence in the light most favorable to [the defendant] indicates that the written guaranty was not executed until after the goods had been delivered. This leaves a genuine question of material fact whether the document is merely a memorialization of a parol agreement made between the parties or their agents prior to the delivery of the goods, or a gratuitous promise made thereafter. Without a previous parol agreement, the signed document may be unenforceable. See Dementas v. Estate of Dallas, 764 P.2d 628, 633 (Utah Ct. App. 1988) ("Events which occur prior to the making of the promise and not with the purpose of inducing the promise in exchange are viewed as

'past consideration ' and are the legal equivalent of 'no consideration'") (quoting 1A. Corbin, Corbin on Contracts Sec. 210 (1963)).

Although the trial court did not articulate its reasoning behind the grant of summary judgment, only one material fact in dispute is required to reverse a summary judgment. See Ruffinengo v. Miller, 579 P.2d 342, 343 (Utah 1978). Since we hold that the evidence of a parol agreement is one such unresolved material fact, we reverse the summary judgment and remand the case for trial or other proceedings."

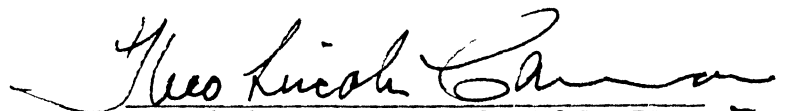
Yoho Automotive, Inc. v. Shillington, 784 P.2d 1253 (Utah 1989)

CONCLUSION

In the instant case, summary judgment was improperly granted as there existed issues of intent and consideration. When reviewed in a light most favorable to the losing party (See Reeves v. Geigy Pharmaceutical, Inc., 764 P.2d 636 (Utah Ct. App. 1988) this Court must reverse the lower Court's decision "without according deference to the trial court's legal conclusions." (Bonham v. Morgan, 102 Utah Adv. Rep. 8 (1989).

WHEREFORE, Harmsen moves this Court to reverse the summary judgment declaring him personally liable for debts incurred by Steve Regan and to remand the issue for trial on the subject.

DATED this 15th day of April 1991


THEODORE LINCOLN CANNON, JR.
Attorney for Appellant

CERTIFICATE OF SERVICE

I certify that four true and correct copies of the foregoing BRIEF OF APPELLANT were mailed via first class mail, postage prepaid and addressed to the following:

KEITH W. MEADE #2218
525 East First South, 5th Floor
P.O. Box 11008
Salt Lake City, Utah 84147-0008

on the 27th day of April 1991.

— Theophilus Cannon —

ADDENDUM

1. FINDINGS OF FACT AND CONCLUSIONS OF LAW.
2. JUDGMENT ENTERED MAY 4, 1990.

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Keith W. Meade (Bar No. 2218)
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IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

* * * * *

VAN WATERS & ROGERS, INC.,)	
Plaintiff,)	FINDINGS OF FACT AND
)	CONCLUSIONS OF LAW
vs)	
STEVE REGAN COMPANY, and)	Civil No. 880907994CV
STEPHEN M. HARMSSEN,)	Judge Pat B. Brian
Defendants.)	
)	
)	

* * * * *

This matter came before the court on plaintiff's Motion for Summary Judgment as against the defendants Steve Regan Company and Stephen M. Harmsen. The court, having considered the pleadings on file, and the deposition of Stephen M. Harmsen together with the argument of counsel, hereby enters the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT:

1. Stephen M. Harmsen signed the Guaranty, Exhibit "A" to the Complaint dated December 13, 1988.

2. The Guaranty provides in part that:

This Guaranty is being given for my benefit and the benefit of the marital community composed of my wife and myself, and the obligation created by this Guaranty shall be binding upon me individually and also upon the marital community composed of my wife and myself.

3. Stephen M. Harmsen testified in his deposition, page 10, lines 9 through 12 as follows:

Q. As I recall your prior testimony what you are saying is you never talked with anyone from Van Waters & Rogers about this Guaranty until 1988?

A My testimony is I have no recollection of a conversation.

4 At the time the Complaint was filed there was due and owing to the plaintiff the sum of \$14,625.66 together with interest at the legal rate.

5. The defendants claim credits for payments made as follows:

Check No. 1088 - May 1988 - \$853.20
Check No. 1291 - November 1988 - \$918.00
Check No. 1270 - June 1989 - \$918.00

By stipulation made in open court, if defendants can produce originals or adequate copies of these checks reflecting signatures and deposit by Van Waters & Rogers, Inc. subsequent to the time of the Complaint, that they are entitled to a partial satisfaction of any judgment entered herein to the extent of the amount of any checks so produced not previously credited.

6. The court finds that Stephen M. Harmsen did not express

to any agent or employee of Van Waters & Rogers any reservation with respect to the Guaranty.

7. The court finds that there are no genuine issues as to any material fact.

8. The parties have stipulated in open court as to the liability of Steve Regan Company and there is no dispute thereon.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the court makes the following Conclusions of Law:

1. Stephen M. Harmsen is personally liable to the plaintiff pursuant to the written Guaranty for any amount due Van Waters & Rogers, Inc. by Steve Regan Company.

2. Plaintiff is entitled to judgment as a matter of law as against Steve Regan Company and Stephen M. Harmsen in the amount of \$14,625.66 together with interest from the date of the Complaint, December 13, 1988.

3. By Stipulation the defendants are entitled to a partial satisfaction of the judgment to the extent that payments as set forth in the Affidavit of Steven Lybbert were in fact received by Van Waters & Rogers and not credited.

DATED this _____ day of April, 1990.

BY THE COURT:

Pat B. Brian
District Judge

Roger G. Segal (Bar No. 2908)
Keith W. Meade (Bar No. 2218)
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FILED DISTRICT COURT
Third Judicial District

MAY 4 1990

SALT LAKE COUNTY
By E. Matheson Clerk

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

* * * * *

VAN WATERS & ROGERS, INC.,)
Plaintiff,)

vs)

STEVE REGAN COMPANY, and)
STEPHEN M. HARMSSEN,)
Defendants.)

* * * * *

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516-90-812am
JUDGMENT

Civil No. 880907994CV
Judge Pat B. Brian

This matter came before the court pursuant to the plaintiff's Motion for Summary Judgment. The court, being fully advised in the premises and having previously entered its Findings of Fact and Conclusions of Law, does now hereby Order, Adjudge and Decree as follows:

1. The plaintiff is entitled to and is hereby awarded a judgment against Steve Regan Company and Stephen M. Harmsen, individually, in the amount of \$14,625.66.

2. Plaintiff is entitled to prejudgment interest in the

amount of \$2,792.77, representing interest from December 13, 1988 to May 4, 1990 at the legal rate of 10%.

3. No attorney's fees are awarded to the plaintiff. Plaintiff is awarded costs of \$75.00 for filing of the Complaint and \$14.25 for service.

4. By stipulation, the defendants are entitled to a partial satisfaction of this judgment to the extent that any of the following payments were received by Van Waters & Rogers and not credited may be evidenced by the production by the defendants of the original payment checks bearing endorsement by Van Waters & Rogers thereon. Plaintiff, upon receipt or being shown those checks, and if the payments have not been previously credited, is directed to prepare and file a partial satisfaction of judgment. Defendant shall also be entitled to a credit for any interest related to the receipt of these payments. The payments referred to in this paragraph are as follows:

Check No. 1088 - May 1988 - \$853.20
Check No. 1291 - November 1988 - \$918.00
Check No. 1270 - June 1989 - \$918.00

5. \$17,507.68 total judgment, together with interest at the rate of 12% per annum from the date of this judgment, together with costs of collection, all until paid.

DATED this 4th day of May, 1990.

I CERTIFY THAT THIS IS A TRUE AND
ORIGINAL DOCUMENT ON FILE IN THE 1430
DISTRICT COURT, SALT LAKE COUNTY, STATE
OF UTAH.

DATE: May 16, 1990

Dee Bastian
DEPUTY COURT CLERK

BY THE COURT:

Pat B. Brian
Pat B. Brian
District Judge