

1962

Marian Cornwall v. Willow Creek Country Club : Brief of Appellant

Utah Supreme Court

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Recommended Citation

Brief of Appellant, *Cornwall v. Willow Creek Country Club*, No. 9568 (Utah Supreme Court, 1962).
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IN THE SUPREME COURT **E D**
of the
STATE OF UTAH

JAN - 5 1962

Clerk, Supreme Court, Utah

MARIAN CORNWALL,

Plaintiff and Respondent,

vs.

WILLOW CREEK COUNTRY
CLUB,

Defendant and Appellant.

No. 9568

APPELLANT'S BRIEF

APPEAL FROM THE JUDGMENT OF THE THIRD
DISTRICT COURT OF SALT LAKE COUNTY
Hon. Marcellus K. Snow, Judge

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STATEMENT OF THE KIND OF CASE

Insofar as this appeal is concerned, this is an action on a written contract to recover the sum of \$1,000 which the plaintiff claims is due under the contract.

DISPOSITION IN LOWER COURT

The case was tried to the Court. From a judgment for the plaintiff, defendant appeals.

RELIEF SOUGHT ON APPEAL

Defendant seeks a reversal of the judgment and judgment in its favor of no cause of action with respect to the \$1,000.

IN THE SUPREME COURT of the STATE OF UTAH

MARIAN CORNWALL,

Plaintiff and Respondent,

vs.

WILLOW CREEK COUNTRY
CLUB,

Defendant and Appellant.

No. 9568

APPELLANT'S BRIEF

STATEMENT OF FACTS

This case involves an action to recover the sum of \$1,000.00 under paragraph six of a written contract entered into between plaintiff and defendant. Miss Cornwall, the plaintiff in this action, is an interior decorator. Willow Creek Country Club, the defendant, is a Utah non-profit corporation recently organized and operating as a golf and country club. The parties entered into a written agreement dated September 22, 1959 (Exh. P-1) in which the plaintiff agreed to furnish her services to the Club as an interior decorator for the interior decoration of defendant's new clubhouse. The contract provides in paragraph two that the decorator shall prepare a master plan for the interior decoration of the entire clubhouse and further prepare such detailed plans, sketches, color charts and other materials as shall

be reasonably necessary to implement the master plan, and also to specify colors, paints, fixtures and other materials to be used in the decoration of the clubhouse. (Exh. P-1, paragraph 2). At the time the contract was entered into the clubhouse was in the process of being constructed. (R. 21)

It was known by both parties at the time the contract was entered into that the Club did not have sufficient funds to complete the interior decoration, (R. 34, 36, 80) and plaintiff had been instructed by letter, (Exh. D-7) written by Mr. Safford, chairman of the Building Committee to the plaintiff prior to the actual execution of the written contract that her purchase plan would take into account the acquisition of furnishings in a manner so as to make the Club operative, if not complete, with the initial expenditures.

“It must be understood as part of this agreement that you are to develop a master plan for decorating the entire premises in a complete and functional manner even though it is recognized that we probably cannot buy all furnishings and accessories at this time to complete your acceptable plans. It is further understood that your purchase plan will take into account the acquisition of such furnishings in a manner so as to make our Club operative, if not complete, with the initial expenditures.” (Exh. D-7)

Plaintiff admits that at the time the contract was discussed and entered into she knew that the Club did not have sufficient funds to complete the schedules she set up for interior decorating.

Q. "Now, at the time you discussed this contract or entered into the contract you were advised were you not that the Club did not have sufficient funds to complete these schedules which you have produced here and which are introduced into evidence as exhibits.

A. "Yes." (R. 34)

It was because of the fact that the Club did not have sufficient funds to complete the interior decorating that the provisions set forth in paragraph six were incorporated into the contract. This is corroborated by both plaintiff and defendant. Mr. Safford, chairman of the Building Committee, testified as follows concerning this paragraph in the contract in answer to questions by defendant's counsel:

Q. "Now, I notice on those letters (Exh. D-12 and D-7) neither of them contains any provision with respect to any penalty clause or payment for \$1,000 in the event the contract is not renewed.

A. Well, the discussion regarding the penalty clause, of course, came up after the letters because it hadn't been brought up to that point.

Q. And would you state whether or not you had a conversation with Miss Cornwall about that.

A. Yes, a number of different conversations.

Q. And will you state, if you can, the approximate time of those conversations and in general what was said by you and what was said by her.

A. Well, the times of the conversations were between the time the letters were written and the actual contract was entered into * * * *.

Q. Now, what was the substance of the conversation with respect to the penalty provision.

A. Well, there were very few points of difference between what we wanted to accomplish. We were simply trying to reduce to writing that which we pretty much had agreed upon. A problem had arisen and it is the reason to the best of my knowledge for the penalty provision in the contract. The problem was that we did not have enough money, which I had told Miss Cornwall, to complete what I as chairman of the Building Committee, and the Building Committee, and the Board had envisioned as proper furnishings for the Club. It was physically impossible. As I recall, there was only \$25,000 available at that time which had to include the kitchen. It was either \$25,000 or \$40,000—either one of them—which would have been impossible to complete the furnishings and, therefore, a problem as far as she was concerned, and also a problem as far as we were concerned was making sure that the tenure of her contract would be long enough to carry out the master plan which our contract called for. Our contract specified, and it was a prime point, that it include a master plan that could be followed through because at that time we didn't anticipate being able to complete it. In fact, we knew we couldn't unless something was done. So our problem was to devise some means that would assure the Club and also Miss Cornwall of being able to complete the job, whatever she came up with in the way of specifications. Therefore, she wanted a penalty clause and I was very much in favor of it and recommended it and got the approval of the Board of having the penalty clause in the contract.

Q. Was it discussed as a penalty provision?

A. The word "penalty" was used and it was put in there for a specific purpose which Miss Cornwall and I discussed on several different occasions, the purpose of it being to make sure that the contract was completed. I insisted with the Board of Directors that some provision be made so that Miss Cornwall could be retained through the entire job so that there would be no changing of horses in the middle of the stream. Changing decorators in the middle of a job, if you have any familiarity with decorating, is ridiculous and could have resulted in a substantial additional expenditure to the Club." (R. 80-83)

When Miss Cornwall was asked on cross examination about this provision she testified as follows:

Q. "Miss Cornwall, will you state the discussion you had concerning the provision put in the contract pertaining to this \$1,000 penalty.

A. When I met with Norval Safford in discussion pertaining to the contract, the \$1,000 clause was put in to assure me of adequate compensation for doing this particular project. The percentage that I had agreed upon to work on was quite a low one and there were other nebulous things; there were various uncertainties at that time. For example, one of the most important discussions in connection with this had to do with the change of officers or any change that might influence the working relationship that we had. And so this particular device was used, as I say, to assure me of adequate compensation.

Q. Now, that was in the event that they terminated your service by virtue of putting in a new Board of Directors to insure that you were able to complete the work.

A. Yes.

Q. And that was the primary discussion that brought the thing about, was it. That actually it would be for the benefit of both; that the Board that was in there at that time wanted to see you complete the project and then you were interested in not having your services terminated prior to the completion of the plan that you were anticipating preparing. Is that it?

A. The interest was mainly in the working relationship of the people with whom you are dealing. An established pattern is developed with one group of people that you are working with that may not follow through the same way, but I wouldn't say that it was the biggest consideration. As I mentioned before, adequate compensation was a consideration because of the percentage figure mentioned." (R. 50, 51)

The plaintiff prepared a master plan for the interior decoration of the entire clubhouse, (Exh. D-5) and color charts, decoration schedules and furnishing and placement lists (Exh. D-6). The master plan was an outline of everything that plaintiff was to do inside the building. (R. 28) All the work outlined in the master plan and schedules as well as outside work around the patios and pool area subsequently outlined and agreed upon between the parties was completed prior to the expiration of the contract. (R. 32, 34) In order to complete the program of furnishing the clubhouse and other projects the club members were assessed \$350.00 each enabling the Club to complete all interior decorating within the one-year term of the contract. (R. 36, 38, 40)

Under the provisions of paragraph three of the contract (Exh. P-1) the Club agreed to pay a fee to the decorator of six per cent of the Club's purchase price of all furnishings purchased by the Club during the term of the agreement. At the time plaintiff filed her action defendant acknowledged there was approximately \$200 to \$300 still owing to plaintiff under the terms of the agreement, but denied that it owed to plaintiff the sum of \$1,000 claimed by the plaintiff under paragraph six of the contract.

Paragraphs five and six of the contract provide as follows:

5. "The decorator is guaranteed a minimum fee of Fifteen Hundred (\$1,500) Dollars. In the event that purchases of furnishings by the Club shall not be sufficient in amount as to permit the decorator a Fifteen Hundred (\$1,500) Dollar fee, on the basis of six (6%) per cent of the price of the furnishings purchased by the Club during the term of the agreement, the difference between the amount the decorator has been paid and Fifteen Hundred (\$1,500) Dollars shall be paid to decorator within thirty (30) days after the expiration of this contract."

6. "This contract shall be for a term of one (1) year from the date hereof, and may be renewed by the Club upon the same terms, for an additional one (1) year, by giving written notice of renewal to the decorator at least thirty (30) days prior to the date of expiration. In the event that the contract is not renewed, the Club shall pay the decorator an additional fee of One Thousand (\$1,000) Dollars."

The trial court found that after the date of the contract on September 22, 1959 there became due and owing to plaintiff from the defendant on account for services, merchandise and sales tax (stipulated at \$50) (R. 18) the sum of \$7,577.41, and that defendant had paid to plaintiff the sum of \$7,293.59, leaving a balance of \$283.82. (In excess of \$4,000 was fee.) Court further found that defendant owed to plaintiff the sum of \$1,000 under paragraph six of the contract because defendant failed to renew the contract. This award of \$1,000 is the only point involved in the appeal.

ARGUMENT

POINT I.

The trial court erred in its interpretation of the contract when it awarded the sum of \$1,000 to the plaintiff for defendant's failure to renew the contract.

In construing a contract the true object is to arrive at the intention of the parties, to be ascertained by considering the object and purpose of the parties in making the agreement. *Anderson vs. Great Eastern Casualty Company* (51 Utah 78, 168 P. 966).

An agreement should be integrated as a whole and the meaning gathered from the entire context and not from particular words, phrases or clauses. In fact, the entire agreement is to be considered to determine the meaning of each part. All provisions of it, if possible, should be so interpreted as to harmonize with each other. Where a contract as a whole discloses a given inten-

tion and certain words or clauses would, if taken literally, defeat the intention they will be interpreted, if possible, so as to be consistent with the general intent. *Vitograph, Inc. vs. American Theatres Company*, (77 Utah 71, 291 P. 303, 12 Am. Jur. Section 241, pages 773-774).

Under paragraph two of the contract the decorator is required to prepare a master plan for the interior decoration of the entire clubhouse (Exh. P-1). Basically, the sole object of the contract was the complete decoration of the clubhouse. The decoration of the outside patios and the pool area was also included. When both of these jobs were done, and both were done within the yearly term of the contract, (R. 32, 34) the work of the interior decorator was finished.

The only intent to be derived from reading the contract is that the parties entered into a contract for the completion of the interior decorating of the clubhouse. The defendant contends that this work, having been completed, there was no contract to be renewed; that in view of the fact that the parties were contracting for the particular work to be done and that it had been done, the contract was terminated. The contract has to be interpreted in the light of the circumstances under which it was made, and the Court may take into consideration the conferences and correspondence between the parties pending the negotiations of the agreement. (12 Am. Jur. Section 234, page 758.) When the circumstances and the correspondence and preliminary negotiations pending this agreement are considered one

comes to the obvious conclusion that lack of funds and a desire to continue the services of the decorator until her plan for decorating was completed led to the insertion of paragraph six into the contract.

The contract was incomplete in that it did not have a provision in it with respect to the termination to be effected by completion of the object of the contract. For that matter, it was incomplete in other particulars in that it failed to mention the decoration contemplated of the patios and pool areas unless it be assumed that the term interior decoration includes these areas. Under these circumstances courts have allowed evidence to be introduced to show the understanding of the parties and their intention with respect to the incomplete provisions. Thus in the case of *Spitz vs. Brickhouse*, (1954, Ill. 124 N. E. (2) 117, 49 ALR (2) 675) the parties executed a standard American Institute of Architects form contract (A.I.A. providing that the architect was to receive fees at the basic rate of ten per cent of the "cost of the work," defining the "cost of the work" as the cost to the owner exclusive of architect fees and providing for preliminary payments of various percentages of the basic rate computed upon a "reasonable estimated cost." The court held the agreement was ambiguous and incomplete in that it was silent as to the size, style and quality of the house and that it would be unreasonable to suppose that the owner entered into a contract which would bind him to accept a house at any cost which the architect might design especially in view of the provision for payment computed on a "reasonable estimated cost."

The court, therefore, allowed parol evidence to be introduced to determine the intention of the parties and a parol agreement that the cost of the house would not exceed \$25,000.

The agreement in the case before this court is ambiguous and incomplete. It sets out the work that is to be done—complete interior decoration—and also provides for a fee on the basis of a percentage of the purchase cost of the interior decorations with a minimum provided in the event the fee does not amount to \$1,500, and further provides for a penalty fee in the event the contract is not renewed. It does not mention termination by completion of the performance of the work that is to be done and it is ambiguous and incomplete in this respect. It would be unreasonable to suppose that the defendant in this case would enter into a contract for a penalty provision for the defendant's failure to renew a contract which was completed. If defendant renewed the contract it would have to pay a minimum fee of \$1,500 when there were no purchases to be made, and if it didn't renew defendant would pay a penalty of \$1,000 when there was nothing further to be done. Certainly this is ambiguous and the contract must be interpreted that if there was work yet to be done by the decorator for which a fee would be payable and defendant failed to renew the contract the defendant would pay to the plaintiff the sum of \$1,000 for its failure to renew the contract. In 12 Am. Jur. Page 275 the rule is set forth which we think applies to this provision of the contract:

“Whatever is necessarily implied in a contract is as much a part thereof as if expressly stated therein, but the implication must result from the language employed in the instrument *or be indispensable to carry the intention of the parties into effect.*” (Italics ours.)

Paragraph six of the contract should be interpreted to read in the following manner :

This contract shall be for a term of one year from the date hereof and may be renewed by the Club upon the same terms for an additional one year by giving a written notice of renewal to the decorator at least thirty days prior to the date of expiration. In the event that the contract is not renewed *and there is work yet to be done by the decorator for which a fee would be payable*, the Club shall pay the decorator an additional fee of \$1,000. (Italics ours.)

In the case of *Loyal Order of Moose vs. Faulhaber*, 327 Mich. 244, 1950, 41 N. W. (2) 535, the standard A.I.A. form contract was held not to be free from ambiguities, so that it was proper to show by parol testimony the actual situation that existed to the knowledge of the architect as well as the owner. The court held that upon evidence that the architect was informed before entering into the contract that the owner did not have the necessary funds to carry out the work he, therefore, must have known that the undertaking was uncertain and contingent and so was not entitled to recover where the owner was unable to raise funds to carry out the work on the scale planned by the architect and finally did the work according to other plans.

Our case is different somewhat from this but the principle upon which the case was decided is applicable to our case. The decision was based upon the understanding of the parties as it must have been in view of the known existing conditions at the time the contract was entered into. In the case of Miss Cornwall vs. Willow Creek Country Club both parties realized and knew that there were insufficient funds available to complete the decorator's plans for the interior decoration and paragraph six of the contract was inserted with this thought in mind. Adequate provisions were put into the agreement to protect the decorator in her fee because the Club didn't have sufficient funds available at the time to perform the work at once. She admits that she knew this fact and she states that the provision was put in the agreement to assure that she received adequate compensation in the event there was a change in the Board of Directors which might have some idea of changing decorating plans. (R 15, 51) It would be an injustice to allow her to recover \$1,000 under these circumstances where the total work to be done had been completed before the time for the renewal arrived. Neither party had anticipated any additional fee other than the six per cent of purchase with a \$1,500 minimum as is evidenced by their letters written prior to the execution of the contract, (Exh. D7 and D12) and it is clear from the evidence on both sides that the purpose of paragraph six in the contract was to insure the completion of the contract by the plaintiff and the defendant. Having completed the contract in full and finished all

planned decorating inside and out, plaintiff was not entitled to a penalty fee for defendant's failure to renew the contract. Plaintiff had received all the compensation contemplated by the parties for full performance of it. Plaintiff claims there were some additional things to be done and cites in support thereof a letter written on the 12th of July, 1960 (Exh. P-9) in which plaintiff sets forth certain observations concerning the operation of the Club after the decorating had been completed. A reading of this letter indicates that it was written in response to complaints on the part of members or officers of the Club which, in fact, were the basis of the defendant's counter claim in this action and that it did not call for or suggest any additional work on the part of the plaintiff for which an additional fee would be owing, nor was it a part of the master plan that was originally prepared by the plaintiff.

CONCLUSION

It is respectfully submitted that a fair analysis of this written contract as a whole considered in the light of the existing circumstances at the time it was entered into clearly establishes that the true intention of the parties at the time the contract was executed was that the \$1,000 provided for in paragraph six in the event the defendant failed to renew the contract would be payable only in the event that there was additional

work to be done by the decorator under the contract for which a fee was payable, and the Club failed to renew it. Since the evidence is clear that the work had all been completed under the contract the trial court's judgment should be reversed.

Respectfully submitted,

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