

1962

Hart Brothers Music Co. v. Lile R. Wood : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

HART BROTHERS MUSIC
COMPANY, a corporation,
Plaintiff and Appellant,
— vs. —
LILE R. WOOD, ALL-AMERICAN
CREDIT CORPORATION,
Defendants and Respondent.

FILED
1281

Case
No. 9675

BRIEF OF RESPONDENT

Appeal From the Judgment of the Third District Court
for Salt Lake County,

HONORABLE MARCELLUS K. SNOW, Judge

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BRIEF OF RESPONDENT

NATURE OF THE CASE

Plaintiff's action to rescind a contract for the sale of a piano based on fraud, return or possession of the piano, together with rental value or, in the alternative, for judgment for the market value of the piano.

DISPOSITION IN LOWER COURT

This is an appeal from a judgment entered by the Honorable Marcellus K. Snow, District Judge, in favor of the Defendant, Lile R. Wood, and against the Plaintiff, no cause of action. The case was tried to the court without a jury. Judgment also was entered in favor of

the plaintiff against the defendant, All-American Credit Card Corporation.

STATEMENT OF FACTS

The plaintiff corporation was engaged in the music business, part of which consisted of the sale of pianos. The defendant, All-American Credit Card Corporation, sold credit cards to the public which could be used at certain specified businesses in the general area of Salt Lake City, Utah, one of which was the plaintiff corporation. The defendant, Lile R. Wood, was president of All-American Credit Card Corporation. After a purchase and sale, the business establishment would be paid, less a discount by All-American.

On December 31, 1959, defendant Wood made a purchase of a piano from the plaintiff using one of the credit cards. Plaintiff subsequently presented its bill to All-American, which has remained unpaid.

ARGUMENT

POINT I

THAT THE TRIAL COURT DID NOT ERR IN RULING NO CAUSE OF ACTION AS TO RESPONDENT, LILE R. WOOD.

(a) Plaintiff failed to establish sufficient evidence of fraud on the part of respondent.

There is no doubt that plaintiff's sole remedy in this case is against the All-American Credit Card Corpora-

tion, unless it can prove that at the time of the transaction in question respondent acted in such a fraudulent manner so as to create liability on his part.

To prove respondent guilty of fraud plaintiff must prove by a preponderance of the evidence that he made a representation which was material to the transaction, and which was false. Plaintiff must also prove that respondent knew that such representation was false, that the plaintiff was ignorant of the falsity of such representation, and that it was relied upon as true. Plaintiff must establish that it had a right to rely on said representation and as a result of such reliance was consequently and proximately injured. *Stuck v. Delta Land & Water Co.*, 63 Utah 495, 227 Pac. 791.

At this point let us review the testimony of Reed L. Hart, the agent of plaintiff who consummated the transaction. This testimony of Mr. Hart, which should be the most favorable plaintiff has to offer, was given under direct examination. Mr. Hart's testimony as to what was said and done on this particular day is found on pages 6 and 7 of the Transcript and is reprinted in plaintiff's brief on appeal.

Subtracting from the testimony of Mr. Hart his conversation with Mr. Donaldson (contents of which were unknown to respondent) and plaintiff's attorney's attempt to testify by means of comment and leading questions, the only comment made by respondent to Mr. Hart in regard to payment is found on page 7 of the transcript, line 18, when he was told by respondent that they would

be paid "Just as soon as you send the bill into the Company."

This statement is no more than an opinion on the part of respondent reflecting the published policy of the Corporation. Placing oneself in the shoes of respondent at this time, not two months later when the parties could look back at what had transpired in the meantime, let us see why respondent would have such an opinion. At the directors meeting on the previous day, \$5,500.00 in cash had been pledged for payment of dealers' accounts. Also secondary sources of income were available. This was to be accomplished by taking the commercial paper which resulted from the purchases of card holders from the various dealers, and pledging or discounting such paper with a financial institution. Looking then at this statement made by respondent at that point of time, it is entirely reasonable to assume that respondent expected that the dealers' accounts would shortly be paid.

Another factor that should be taken into consideration is that Mr. Hart had talked at length with Mr. Donaldson, the General Manager of the Credit Card Corporation, about the methods by which payment would be made. There is no indication that Mr. Hart relied in any way upon the statement made by respondent. Mr. Hart had talked with Mr. Donaldson, who was active in the direct management of the Credit Card Corporation, who knew more about the operation and condition of the Company than did respondent who devoted only a few hours a month to the Company.

Therefore, taking plaintiff's most favorable testimony, we can see that only one statement was made by respondent in regard to payment of the account. That statement was but a matter of opinion on the speaker's part; he did not regard the statement as false or misleading. There is no proof that plaintiff relied on this statement, in fact, it is very possible that the statement was not given until after the contract was written up.

(b) *The reviewing Court must view the evidence in a light most favorable to the verdict:*

The above statement is a very well-established principle in appellate law and has been upheld in many cases in this jurisdiction. *Toomer's Estate v. Union Pacific Railroad Co.*, 239 P. 2d 163; *Hillgard v. Utah By-Products*, 1 Utah 2d 143, 263 P. 2d 289; *Coombs v. Perry*, 2 Utah 2d 381, 275 P. 2d 680.

A statement on this subject in *Hadley v. Wood*, 9 Utah 2d 366, best states respondent's position.

"Undoubtedly if we viewed the evidence in the light most favorable to plaintiff, as seems to be done in his brief, the evidence could be regarded as supporting that conclusion. However, in reviewing the case upon appeal, it is our duty to survey the evidence in the light most favorable to the jury's verdict."

CONCLUSION

Without further belaboring the matter, the Supreme Court has frequently admonished litigants it would not

reverse the finding of the trial court unless the evidence clearly preponderates against those findings. The trial court had many advantages not available to the appellate court, not the least of which was the opportunity to visually inspect the witnesses and evidence as presented. Conservatively speaking, the least to be said about the evidence in this case is that the trial court's factual findings are not unreasonable and they should be sustained on this appeal.

Respectfully submitted,

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