

1962

Harry G. Heathman v. United Auto Recovery
Bureau, Inc., Citizens State Bank of Cortez et al :
Brief of Respondent Citizens State Bank of Cortez

Utah Supreme Court

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IN THE SUPREME COURT
of the
STATE OF UTAH

HARRY G. HEATHMAN,

Plaintiff and Appellant,

vs,

UNITED AUTO RECOVERY
BUREAU, INC., CITIZENS
STATE BANK OF CORTEZ et al.,

Defendants and Respondents.

Case No.
9688

BRIEF OF RESPONDENT
CITIZENS STATE BANK OF CORTEZ

Appeal by Plaintiff and Appellant, Harry G. Heathman,
from the Judgment of the Third Judicial District Court
of Salt Lake County, Honorable A. H. Ellett, Judge,
granting this Respondent's Motion for
Summary Judgment.

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Case No.
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BRIEF OF RESPONDENT
CITIZENS STATE BANK OF CORTEZ

STATEMENT OF THE NATURE OF THIS CASE

This respondent, Citizens State Bank of Cortez, by its counsel, must say in all candor that he cannot concisely state the nature of this case, either generally or as to this defendant and respondent. Plaintiff's complaint consists of eighteen pages, embodying two claimed causes of action which the writer is unable to distinguish. Generally, the complaint alleges in general terms as to this respondent, extortion, embezzlement (Record 5, 9), deceit (Record 7), as well as general allegations of fraud, assault and battery and false arrest as to all of the defendants named.

DISPOSITION IN LOWER COURT

In the lower court, this respondent was granted a summary judgment of no cause of action, based upon a previously dismissed action commenced by this respondent and against this appellant, and dismissed with prejudice upon the stipulation of the parties therein, the mutual release of these parties, each against the other, and upon the statements of the appellant made to the Court at the hearing on respondent's motion for summary judgment.

RELIEF SOUGHT ON APPEAL

The appellant seeks a reversal of the summary judgment granted this respondent by the trial court. This respondent contends that the summary judgment was properly granted by the trial court, and seeks to have the same affirmed.

STATEMENT OF FACTS

The following is a statement of facts which, as far as the respondent Citizen's State Bank of Cortez is aware, are not disputed by the appellant.

On or about April 21, 1961 an action was commenced by the respondent herein, Citizen's State Bank of Cortez, against the appellant herein, Harry G. Heathman. This action (Civil No. 130502, District Court of Salt Lake County) was an action to replevin an automobile owned by Mr. Heathman and mortgaged by him to the Citizen's State Bank of Cortez. The possession of the automobile

was obtained by the Salt Lake County sheriff pursuant to a writ of replevin, and thereafter responsive pleadings to plaintiff's complaint were filed by Mr. Heathman. After negotiations, it was agreed between counsel for the plaintiff Bank and Mr. Heathman that, upon payment to the Bank of the sum of \$677.50, the replevin action would be dismissed with prejudice, that the parties would enter into a mutual release, and that the Bank would deliver to such person as Mr. Heathman might designate in writing, title to the automobile subject of the replevin action, together with an assignment of the Bank's interest in the promissory note and mortgage subject of the replevin action. Pursuant to this agreement, Mr. Heathman delivered to counsel for the plaintiff Bank the sum of \$677.50, together with a letter designating as the person who should receive the title to the automobile, and the assignment of the mortgage, as Phyllis A. Chatwin of 359 Garfield Avenue, Salt Lake City, Utah. Concurrently, the replevin action was dismissed with prejudice upon the stipulation of Mr. Heathman and counsel for the Bank, and counsel for the plaintiff Bank in turn delivered to Mr. Heathman and to Phyllis A. Chatwin the title to the said automobile, upon which title certificate the plaintiff Bank had executed a release of its mortgage, and also an assignment executed by the president of Citizens State Bank and attested by the cashier, and bearing an attestation, executed by a notary public. Mrs. Chatwin, on the basis of the documents delivered to her by the Bank, obtained a valid Utah certificate of title.

showing title to the automobile to be in her, free of the respondent Bank's lien.

Sometime thereafter, the instant action was commenced by Mr. Heathman, and the respondent Bank moved for a summary judgment (R. 57). This motion was based upon the prior dismissal with prejudice of the replevin action, based in turn on the stipulation of Mr. Heathman and Citizens State Bank, the mutual release executed by Mr. Heathman and the respondent Bank (R. 61, 62), and the letter signed by Mr. Heathman and designating Mrs. Chatwin as the person to whom the documents were to be delivered (R. 62). This motion was granted by the trial court, respondent Bank being awarded a summary judgment of no cause of action (R. 71), from which summary judgment appellant prosecutes this appeal.

It should be noted (Transcript, particularly Page 3, Line 20 and Page 9, Line 24) that at the hearing of this Respondent's Motion for Summary Judgment, the Appellant was given every opportunity, in addition to his pleadings and affidavit, to present his claims of fraud to the Court. The Court determined that each claim by Mr. Heathman, if accepted as represented, nevertheless failed to constitute any legal avoidance of the stipulation and order of dismissal of the previous action, or the mutual release, each executed by the Appellant. (Transcript, Page 11, Lines 1, 2, 3)

STATEMENT OF POINT

POINT I. THAT THE TRIAL COURT PROPERLY GRANTED RESPONDENT'S MOTION FOR SUMMARY JUDGMENT, BASED UPON THE DISMISSAL OF A PRIOR ACTION, THE STIPULATION OF THE PARTIES AND A MUTUAL RELEASE EXECUTED BY THE PARTIES.

ARGUMENT

It now appears that Mr. Heathman, after obtaining redelivery of his automobile by a compromise agreement with the Citizens State Bank, seeks to avoid his side of the compromise and the release executed by him, and proceed against the said Bank on a claim, the nature of which is not clear from his complaint, other than a general allegation of fraud. However, in support of his efforts to avoid the legal effects of the release executed by him, Mr. Heathman now claims that he would not have settled had he known who the officers of the Citizens State Bank were at the time of the settlement (Transcript page 4, lines 12 to 25). As the trial court pointed out (Transcript page 11, lines 7 to 13), since the suit was brought against the corporation and not against the officers individually, this could have had no materiality, assuming for the sake of argument that Mr. Heathman's allegations in this respect are true.

It is the contention of the respondent, Citizens State Bank of Cortez, that the agreement made by it with Mr. Heathman, in good faith and for a valuable consideration, has been fully performed in every particular by the Citizens State Bank and by its counsel, and that if any-

one has been defrauded it is this respondent and not the appellant. Respondent, on the representations of Mr. Heathman that this would conclude the matter, dismissed with prejudice its claim in the amount of \$1,321.59, together with its claim for attorney's fees under the provisions of the promissory note in the amount of \$350.00, upon the payment to the Bank of less than half this amount.

Mr. Heathman has made no offer to tender to the respondent security for the amount of its claim which was dismissed, less the amount actually paid. See 45 Am. Jur. 713, par. 53. It is the position of the respondent Bank that the law involved in the instant case is basic, and that the dismissal with prejudice of the original action, the stipulation therein of these parties, and the release executed by the parties, preclude the reopening of this matter by a subsequent suit. See Rule 41(a)(1)(ii), U.R.C.P. See, also, *Kelly vs. Salt Lake Transportation Co.*, 100 Utah 436, 116 Pac. 2nd, 383, and *Anderson vs. Oregon Short Line Railway*, 47 Utah 614, 155 Pac. 446.

CONCLUSION

(It is respectfully submitted that the trial court, upon Heathman (Transcript), correctly granted the Citizens the record and upon the representations made by Mr. State Bank of Cortez a summary judgment, and the action of the trial court should be affirmed.

Respectfully submitted,

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