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Joseph Blackett dba Joe's Motor and Trailer Sales v. Financial Indemnity Company and S. D. Loder : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT
of the
STATE OF UTAH

JOSEPH BLACKETT dba JOE'S MOTOR AND TRAILER SALES,
Plaintiff and Appellant,

—vs.—

FINANCIAL INDEMNITY COMPANY and S. D. LODER,
Defendants and Respondents.

Case No. ~~13450~~ 9740

APELLANT'S BRIEF

APPEAL FROM THE JUDGMENT OF THE THIRD JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY, STATE OF UTAH
Honorable Aldon J. Anderson, District Judge

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—vs.—

FINANCIAL INDEMNITY COMPANY and S. D. LODER,
Defendants and Respondents.

Case No. 134803

APELLANT'S BRIEF

NATURE OF CASE

This case involves the question of whether or not the collision coverage under a policy of insurance would cover an insured mobile home dealer who had made a sale of a particular mobile home at Salt Lake City, Utah, conditioned on its delivery in Flagstaff, Arizona, and in transit from Salt Lake City to Flagstaff it is damaged.

DISPOSITION IN LOWER COURT

The Third Judicial Court (Aldon J. Anderson) held at the pre-trial hearing that as a matter of law the defendants' policy of insurance did not insure the plaintiff against the loss claimed by the plaintiff.

RELIEF SOUGHT

The relief sought in this Appeal is as follows:

A. Reversal of the lower Court's judgment and decision.

B. Order directing judgment to be entered in favor of plaintiff and against the defendant for the sum of $2,400.00 representing the loss sustained by plaintiff in accordance with the lower Court's Findings of Fact

STATEMENT OF FACTS

The plaintiff at all times mentioned herein was a dealer in mobile homes. He was also the named insured under a physical damage policy of insurance issued by the defendant.

In the defendant's policy (Ex. 1) and under paragraph 1 of the endorsement, it is provided as follows: "Property Covered. The policy covers automobiles (mobile homes) (a) — (b) held by the insured pending delivery, delivery after sale, except as to loss for which the interest of the purchaser is covered by insurance. Automobiles (mobile homes) consigned to or owned by the insured which are subject to a trust agreement, bailment lease, conditional sale, purchase agreement, mortgage or other encumbrance are not covered hereunder unless specifically so indicated below." The insured's interest was specifically covered in relation to the last sentence in the quotation immediately above.

On the 20th day of June, 1961, and while the aforementioned policy was in effect, plaintiff sold to one S. D. Loder a certain mobile home for the sum of $2,460.00. As part of the agreement of sale, plaintiff was to deliver the trailer to the said Loder at Holbrook, Arizona. (Depo. P. 13 L 1-6, L 28-29, Findings of Fact ¶5). During the course of delivery of the trailer by plaintiff and between Salt Lake City and Holbrook, Arizona, the trailer was tipped over and damaged beyond economical repair (Findings of Fact ¶7) and plaintiff thereafter purchased and delivered to the said Loder another trailer to replace the damaged one at a cost of $2,400.00 (Findings of Fact ¶8).

Subsequent to the time of purchase of the original trailer, the said Loder had purchased his own insurance policy (Ex. 2) with another insurance company, insuring himself against collision and upset (Findings of Fact ¶6). Plaintiff was unaware that said Loder had obtained his own insurance (Depo. p. 19, L. 13-30, p. 20 L. 1-16). Thereafter, however, plaintiff learned of possibly some other insurance on the trailer after defendant's agent, Phil Granere, had traveled to Arizona to inspect the damaged trailer. (Depo. p. 21, L. 10-24). Defendant's agent Granere thereafter requested plaintiff to replace the trailer, (Depo. p. 21, L. 29-30), which plaintiff did by purchasing one from a dealer in Gallup, New Mexico, for the sum of $2,400.00 (Depo. p. 21. L. 25-30, p. 22 L. 1-26).

Subsequently, defendant refused to honor a claim presented to defendant and in answer to plaintiff's complaint alleged that the trailer damaged in the collision was covered by the company insuring S. D. Loder individually.

ARGUMENT

THE COURT ERRED IN GRANTING JUDGMENT TO THE DEFENDANT APPARENTLY BASED ON THE PREMISE THAT A COMPLETED SALE HAD BEEN EXECUTED

BETWEEN PLAINTIFF AND HIS CUSTOMER AND THAT PLAINTIFF THEREFORE HAD NO INSURABLE INTEREST IN THE PROPERTY WHICH WAS THE SUBJECT OF THE SALE.

Apparently, the holding of the lower Court in accordance with the Findings of Fact was to the effect that the plaintiff had no insurable interest in the mobile home when it was damaged, based on the premise that the sale of the mobile home was concluded or completed at the time of payment to plaintiff rather than the sale to be completed upon delivery of the mobile home at Holbrook, Arizona. The Court's pre-trial Findings of Fact found a mobile home policy of insurance was issued by defendant to Joseph Blackett, plaintiff, which insured plaintiff against loss from collision or upset of mobile homes consigned to or owned by plaintiff. The Court also found that on the 20th day of June, 1961, the plaintiff sold to one S. D. Loder a home trailer for $2,460.00, that as part of the sale the plaintiff agreed to deliver to S. D. Loder the trailer in Holbrook, Arizona.

The contract between plaintiff and S. D. Loder for sale of the trailer was executory until the trailer was delivered to Holbrook, Arizona. The delivery of the trailer was a condition precedent to the passing of title to the trailer. Until the trailer was in Holbrok, Arizona,

the contract was merely executory and title does not vest in buyer until such acts have been performed. Sales subject to conditions are adequately discussed in *Peters v. Macchiaroll,* 74 Arizona 62, 243 P.2d 777.

Section 60-2-2, Utah Code Annotated, 1953, states:

> "Property in specific goods passes when parties so intend. — (1) Where there is a contract to sell specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.
>
> (2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties, usages of trade and the circumstances of the case."

Section 60-2-3, *Utah Code Annotated,* 1953, gives the rules for asserting the intention of the parties unless a diffferent intention appears. The court applied Rule (5) to determine when title transferred in *Union Portland Cement Company v. State Tax Commission,* 110 *Utah* 135, 170 *P2d* 164.

> "Rules for ascertaining intention. — Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer: . . .

> Rule (5) If a contract to sell requires the seller to deliver the goods to the buyer, or a particular place, or to pay the freight or cost of transportation to the buyer, or to a particular place, the property does not pass until the goods have been delivered to the buyer or have reached the place agreed upon."

The Code provisions are clear and self-explanatory. An analysis of the Court's pre-trial Findings of Fact under the standards stated in the above Code sections establishes the fact that the plaintiff had title to the trailer until delivery was made to S. D. Loder at Holbrook, Arizona. The intention of the buyer and seller was to require the seller to transport the trailer to Holbrook, Arizona. The court in *E. C. Olsen v. State Tax Commission*, 109 Utah 563, 168 P. 2d 324, states that the intentions of the parties at the time of transaction is the controlling factor.

The requirement of delivery of goods is of the greatest importance in showing that intention of the parties was not to pass title until the trailer was delivered. It is a general rule that in absence of contrary agreement, delivery and acceptance of property vested title in buyer. *Stevens-Franklin Motors v. Lambos*, 71 Ariz. 389, 228 P.2d 267.

The Supreme Court of Kansas in *Rogers v. Arapahoe Pipeline Company*, 185 Kansas 426, 345 P.2d 702

said if by terms of contracts seller is required to send or forward or deliver goods to buyer, title and risk remains in seller until transportation is at an end or goods are delivered in accordance with the contract, after which time the title is vested in buyer.

Section 60-2-3, Rule 5, of Utah Code Annotated, 1953, is a codification of Section 19 of Uniform Sales Act, providing that if a contract to sell requires the seller to deliver the goods to the buyer or at a particular place or to pay the freight or cost of transportation to the buyer or to a particular place, then property does not pass until the goods have been delivered to the buyer or reached the place agreed upon. Rule 5 applies where the contract requires the seller to deliver the goods to the buyer or at a particular place.

The instant case is within the application of Rule 5 as there is an express obligation to deliver the goods to the buyer at a particular place. The cases interpreting Section 19 of the Uniform Sales Act (Utah 60-2-3, Rule 5) hold that where it is agreed as part of the contract of sale that the goods are to be delivered to the buyer at a designated place, title does not pass until goods are delivered in accordance with the contract. Title remains in the seller and the risks of transportation and loss must be borne by the seller. *Goldberg v. Southwestern Metals*

Corp., 92 Cal. App. 2d 819, 208 P2d 75. *Donner v. Associated Lace Corp.*, 102 N.Y.S. 2d 755, 103 N.E. 2d 340. *Lakeside Truck Rental, Inc. v. Bowers*, 180 N.E. 2d 140, 173 Ohio 108.

In the instant case no different intention appears from the contract of sale than to have title to the trailer not pass until delivered. The purpose of buyer making the sale conditioned upon delivery of the trailer in Holbrook, Arizona, was to remove responsibility of getting the trailer to Holbrook, Arizona, from himself.

The conduct of parties and conversations between buyer and seller demonstrate that the parties intended to have title remain in the seller until delivery at Holbrook, Arizona. In the deposition of Joseph Blackett taken December 17, 1962, Page 12, at line 29, Mr. Blackett tells of sale of this particular trailer and the common practice in the trade. He said, "Well, anytime we sell a trailer, we have to deliver it. *The sale is made on delivery.*" (Emphasis added). Mr. Blackett goes on to say that usage in the trade requires delivery as part of the sale.

In a discussion, as testified to by Mr. Blackett, concerning insurance further indicates the intent of the parties relative to when title was to pass and when Blackett's

interest in the trailer was to cease, and also as to the time the buyer was to receive title. We quote from the deposition commencing at page 19, line 25:

> "A. The discussion I had with Loder did not amount to—what it amounted to was this: I said, 'Loder do you have collision on the trailer?
>
> "He says, 'No I don't.'
>
> "I says, 'We carry a two hundred fifty dollar deductible on merchandise that we deliver, that we sell'."

Continuing on page 20:

> "Q. What else was said?"
>
> "A. And he said, 'What about me having insurance on the trailer?'
>
> "I said, 'The minute we unhook from that trailer our insurance is no good. That was the understanding I had with the insurance company.'
>
> "So he said, 'Should I obtain insurance?'
>
> "I says, 'That is up to you. It is nothing to do with me. That is up to you, but the minute we unhook from it we are through with it.' "
>
> "Q. Any further discussions about insurance?"
>
> "A. No. No, that was all there was."

"Q. You don't know whether he got insurance or not?"

"A. No, I didn't know whether he had any. Phil said there was some dispute between Financial Indemnity and Farmers."

The conversation certainly demonstrates that it was the intention of the buyer and seller that title not pass until the trailer was unhooked at Holbrook, Arizona. The parties obviously intended that the seller would keep the title and retain the risks of transportation.

It is a general principal of law that one has an insurable interest in property where he derives a benefit from its existence or would suffer loss from its destruction. 29 Am. Jur. 781, 6 Blashfield 132.

It is further held that a vendor of personal property retains an insurable interest in the property sold so long as he has any interest therein.

It is certainly clear from the record before this Court that the plaintiff in this instance not only had an interest in the trailer but also had title until delivery was made of same. It should also be very clear that the plaintiff herein had an obligation by reason of his contact with the purchaser to deliver the trailer, which was subsequently damaged, or be liable for its fair market value.

Insurable interest is also defined by our Insurance Code in Section 31-19-4, though relating to fire insurance, we believe it to encompass property which is the subject matter of this action. The Code provision states that an insurable interest . . . "means any lawful and substantial economic interest in the safety or preservation of the subject of the insurance free from loss, destruction, or pecuniary damage."

Under the facts of this case, it should appear apparent that the plaintiff certainly had an economic interest in the property which he agreed to deliver to the purchaser.

CONCLUSION

Based on the foregoing argument and authorities, it appears clear that this Court should reverse the judgment of the District Court and find the issues in favor of the plaintiff and should further direct the lower Court to enter judgment in favor of the plaintiff and against the defendant, Financial Indemnity Company in the sum of $2,400.00 in accordance with the Findings of Fact.

Respectfully submitted,

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