

1964

Reliance National Life Insurance Co. v. William P. Hansen : Plaintiff's Brief

Utah Supreme Court

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Recommended Citation

Brief of Appellant, *Reliance National Life Insurance Co. v. Hansen*, No. 10003 (Utah Supreme Court, 1964).
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**IN THE SUPREME COURT
of the
STATE OF UTAH**

FILED

JUN 3 1964

**RELIANCE NATIONAL LIFE
INSURANCE COMPANY,**

Plaintiff and Appellant,

vs.

WILLIAM P. HANSEN,

Defendant and Respondent.

Supreme Court, Utah

**Case No.
10,003**

UNIVERSITY OF UTAH

JUN 30 1964

PLAINTIFF'S BRIEF

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**Appealed from Third District Court of Salt Lake County,
Hon. Stewart M. Hanson, Judge**

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PLAINTIFF'S BRIEF

STATEMENT OF NATURE OF CASE

This is an action by the plaintiff, Reliance National Life Insurance Company, for the rescission of a written contract of employment, between plaintiff and defendant, William P. Hansen. The plaintiff claims that certain fraudulent statements made by defendant during the preliminary negotiations induced plaintiff to

enter into the employment contract, and that at the time the statements were made by defendant, he knew them to be false and misleading. Plaintiff further claims that after the contract had been signed by both parties, the defendant conducted himself in such a manner that there were reasonable grounds to terminate the contract for cause.

As a result of the foregoing, plaintiff contends all monies paid to the defendant under the contract and all expenses incurred by virtue of his employment should be returned, and that defendant have no rights by reason thereof.

Defendant counterclaimed and alleged that there are certain monies due him by virtue of the contract of employment, as well as commissions earned after the contract had been terminated.

DISPOSITION IN LOWER COURT

The case was tried to the court. From a judgment for defendant of "no cause of action on plaintiff's complaint," and an award of \$3,500.00 on two separate counts of the defendant's counterclaim, plaintiff appeals. The first part of the counterclaim involves the severing of that portion of the contract dealing with the airplane from the contract as a whole; the second, commissions earned after the contract was terminated. The judgment further provides that the defendant's contract of employment was "terminated for cause"

and ,therefore, defendant was not entitled to receive any monies that accrued in the form of bonuses or override commissions. The plaintiff appeals upon the grounds that the judgment of the court is not supported by the Findings of Fact.

RELIEF SOUGHT ON APPEAL

Plaintiff seeks reversal from that portion of the Lower Court's judgment which finds that the defendant may recover the unpaid balance (\$2,500.00) due on the airplane. The plaintiff also seeks reversal from that portion of the Lower Court's judgment which finds that the defendant is entitled to recover certain commissions claimed to have been earned after the employment contract was terminated. The plaintiff further seeks recovery of all monies paid under the contract, as well as the expenses incurred in the maintenance of the airplane referred to above, along with all payments made while the airplane was in the possession of the plaintiff, plaintiff having assumed the original purchase contract.

STATEMENT OF FACTS

The plaintiff is a corporation organized on January 26, 1954, for the purpose of selling life insurance. Frank B. Salisbury helped organize the company, and since its incorporation has actively managed the company as its president. (R. 59, 60). In June of 1961,

Salisbury saw an advertisement in a bulletin called "The Western Underwriter" outlining the qualifications of the defendant, Mr. Hansen. (R. 61). After the original contact between Salisbury and Mr. Hansen, negotiations were entered into, and preliminary to the signing of the employment contract, (P. Exh. 1), Mr. Hansen made the following representations which were false, and known to be false, at the time made:

- (a) Defendant had a presently existing sales organization which defendant would bring with him to Plaintiff company. (R. 63).
- (b) Defendant had developed a way of selling mutual funds and insurance policies in a package and that this program had been approved by the insurance commissioner of Utah and the S.E.C. (R. 63, 64, 65).
- (c) Defendant had developed sales material to be used by insurance salesmen in selling a package consisting of mutual funds and insurance policies, and this sales material had been approved by the insurance commissioner. (R. 75, 104) (P. Exh. 23).
- (d) Defendant had successfully field tested this program. (R. 64).

Also, during preliminary talks the defendant represented that an airplane he owned was necessary for the success of the sales program. (R. 233). As a result, plaintiff agreed to accept an assignment of defendant's equity in the airplane for a total consideration of \$4,000.00. One Thousand Five Hundred Dollars (\$1,500.00) of this amount was paid defendant on the day

the employment contract was signed, the balance was due on or before January 20, 1962. This was made a part of the contract of employment. (P. Exh. 1).

During the first part of September, plaintiff acted to terminate the contract. (R. 80). After notice of termination the defendant was offered the airplane if he would repay the initial \$1,500.00, which he refused. (R. 232). The refusal was due to his financial condition at the time. (R. 242).

During the period plaintiff had possession of the airplane, it paid out a total of \$8,559.08. (R. 133). This figure includes monthly payments, insurance, maintenance, fuel, etc. (R. 133). The airplane was sold April 12, 1962.

Prior to the termination of the employment contract, plaintiff paid to defendant \$3,750.00 in salary; however, there were no bonuses paid. (R. 186).

After termination the defendant continued with the company for a short period on a commission basis. During this period defendant claims to have earned \$1,000.00 in commissions. (R. 245). The plaintiff contends if anything is due, it does not exceed \$45.00. (R. 30, 31, 32, P. Ex.).

Plaintiff presented evidence which shows it was damaged in the sum of \$20,107.30 because of defendant's false statements. (R. 133). The breakdown is as follows:

Airplane	\$8,559.08 (R. 133)
Commissions, etc.	4,497.22 (R. 133)
New Sales Program, etc.	3,301.00 (R. 133)
Salary paid defendant	3,750.00 (R. 186)

POINT I

THE COURT'S CONCLUSION OF LAW WHEREIN IT FOUND "NO CAUSE OF ACTION" ON PLAINTIFF'S COMPLAINT, AND YET FOUND AS A FACT THAT THE DEFENDANT WAS GUILTY OF FALSE AND FRAUDULENT MISREPRESENTATIONS IN THE NEGOTIATIONS PRELIMINARY TO THE SIGNING OF THE EMPLOYMENT CONTRACT ARE ERRONEOUS.

The Findings of Fact as accepted by the court are not disputed by the defendant in that no cross appeal was filed. The pertinent provisions are:

"1. Plaintiff is a corporation organized and existing pursuant to the laws of the State of Utah, and is duly authorized to engage in the insurance business in the State of Utah.

2. Frank B. Salisbury is the President of Plaintiff corporation.

3. Defendant is an experienced insurance salesman and has served in administrative capacities with various insurance companies in the State of Utah.

4. The defendant inserted a notice in an insurance journal to the effect that he was seeking employment with an insurance company. Pursuant to this notice, defendant was personally interviewed by Frank B. Salisbury concerning the possibility of defendant being employed by plaintiff. Salisbury made no search of defendant's past record.

5. *The defendant made the following representations of fact to Frank B. Salisbury for the purpose of inducing plaintiff to enter into an employment contract with the defendant:*

- a. Defendant had a presently existing sales organization which defendant would bring with him to Plaintiff company.
- b. Defendant had developed a way of selling mutual funds and insurance policies in a package and that this program had been approved by the insurance commissioner.
- c. Defendant had developed sales material to be used by insurance salesmen in selling a package consisting of mutual funds and insurance policies, and this sales material had been approved by the insurance commissioner.
- d. Defendant had successfully field tested this program.

6. *The statements made by defendant to plaintiff, as set forth under Finding of Fact No. 5, were false and were known by defendant to be false at the time they were made.*

7. *Plaintiff would not have entered into any contract with defendant had it not been for the false statements by defendant to plaintiff, as set forth in Finding of Fact No. 5.*

8. *In reliance on the statements made by defendant to plaintiff, as set forth in Finding of Fact No. 5, plaintiff entered into a written contract with defendant which was received in evidence as Pretrial Exhibit 1, pursuant to which plaintiff agreed as follows:*

- a. *To assume the purchase contract of a certain airplane being purchased by defendant and to pay defendant the sum of \$4,000.00 for defendant's equity in the same.*
- b. *To pay defendant a bonus in an amount equal to 1% of all first year premiums on life insurance business collected by plaintiff during the defendant's employment with plaintiff.*
- c. *To pay defendant a salary of \$1,500.00 per month.*
- d. *To pay defendant a bonus based on the difference between the cost of acquiring new business and 100% of the amount of premium received of new business.*

9. *The contract of employment between plaintiff and defendant, as set forth in Finding of Fact No. 8, was terminated by plaintiff for cause due to the following acts of the defendant:*

- a. *The defendant was directed to sell the afore-said airplane and made no effort to do so.*
- b. *The defendant was instructed not to approach the insurance department of the State of Idaho*

in regard to the Estate Accumulator Policy. Nevertheless, the defendant did consult with that department with negative results to the prejudice of plaintiff.

- c. Defendant was instructed not to sell a participating policy which was being designed by plaintiff until the policy had been approved by plaintiff's actuary. Nevertheless, defendant proceeded to sell this policy before approval from the actuary was obtained.
- d. Defendant was instructed not to contact any insurance department regarding approval of the Estate Accumulator policy, but to leave this matter in the hands of the actuary for plaintiff. Nevertheless, defendant wrote the Insurance Commissioner of the State of Washington regarding approval of this policy with adverse results to plaintiff.
- e. Defendant was instructed not to use the company airplane for personal business, but nevertheless did use the airplane for personal business.

10. *The agreement of plaintiff to purchase the equity of defendant in the aforesaid airplane was a separate agreement divisible from the employment contract and the terms thereof.*

11. Plaintiff did not learn of the falsity of defendant's statements, as set forth in Finding of Fact No. 5, until more than three months after plaintiff and defendant entered into the aforesaid employment contract.

12. *Plaintiff has paid the sum of \$8,268.40 on the purchase contract of the said airplane and for the up-*

keep thereof, but plaintiff has not paid defendant the sum of \$2,500.00 which plaintiff agreed to pay defendant under the terms of the aforesaid employment contract.

13. *At the time plaintiff terminated the said employment contract, plaintiff requested defendant to take possession of the said airplane and assume the burden of completing the purchase contract payments.*

14. Plaintiff paid the defendant the sum of \$3,750.00 as salary under the terms of said employment contract.

15. Subsequent to the time plaintiff terminated the said employment contract, defendant sold certain insurance policies for plaintiff, and there is now due the defendant, as commissions on such sales, the sum of \$1,000.00.

The Court having entered its Findings of Fact, now makes the following conclusions of law:

1. Defendant is not entitled to any compensation by reason of the employment contract entered into between plaintiff and defendant.
2. The agreement of plaintiff to purchase the equity of defendant in the aforesaid airplane was a separate agreement, divisible from the employment contract, the defendant is entitled to judgment against plaintiff in the sum of \$2,500.00, being the amount plaintiff agreed to pay defendant for defendant's said equity.
3. Defendant is entitled to judgment against the plaintiff in the amount of \$1,000.00 being the amount owed by plaintiff to defendant for in-

surance commissions earned by defendant subsequent to the termination of the aforesaid employment contract". (Emphasis added).

A contract induced by fraud is voidable at the option of the party injured by the fraud, and the defrauded party may elect to rescind the contract upon its discovery; however, he must act with reasonable promptness, 12 *Am. Jur.* 638, 639; 24 *Am Jur.* 12; *Taylor vs. Moore, et al.*, 51 P.2d 222, 87 Utah 493; *Shapiro vs. Goldberg*, 192 U.S. 232; 24 S.Ct. 259; *Levine et al. vs. Whitehouse et al.*, 109 P.2, 37 Utah 260.

Where a party sues for the rescision of a written contract, the purpose of the proceedings is to restore the defrauded party to the position he was in prior to the execution of the instrument induced by the fraud of the other contracting party. Where there has been a serious and intentional attempt to deceive, the party upon whom the fraud has been imposed must, upon its discovery, act. In the case of *Skola vs. Merrill, et al.*, 64 P.2d 185, 91 Utah 253, this court impressed this requirement upon the law of this state.

In the case presently before this Honorable Court, Mr. Salisbury, acting as president of the plaintiff, notified the defendant of the termination of the agreement, and tendered back the airplane within a matter of days after it was discovered that the representations made by the defendant were false.

The restoration of the status quo in a proper case of rescision is a two-edged sword. The courts have held that it is necessary that both parties be returned to the

position that existed prior to the contract. The party rescinding must tender back that which he received.

Thus, when the person defrauded has been induced into making expenditures as a result of misrepresentation, provided they were reasonable, these are recoverable, insofar as they have been rendered fruitless because of the deceit. *McCormick on Damages*, Ch. 18, § 122, p. 458.

In rescision the plaintiff's expenditures are naturally recoverable, with due accounting for benefits. *Johnson vs. Gilbert*, 382 P.2d 87. Ore.; *Strand Bldg. Corp vs. Russell & Saxe, Inc.*, 232 N.Y. 2d 384; *First National Bank of West Plains vs. King*, 363 S.W. 2d 590,; *Erisman vs. Overman*, 358 P.2d 85, 11 P.2d 258.

The *Erisman* case, above cited, supports the general principles of law in matters of rescision. The party rescinding must tender back everything received before the court restores the status quo between the parties. The corollary of this rule is also accepted, that where there is fraud involved, and a timely tender made, the defrauded party has the right to receive back what has been paid or given or assumed under a contract.

POINT II

THE COURT REACHED ERRONEOUS CONCLUSIONS OF LAW FROM THE FACTS FOUND WHEREIN IT AWARDED JUDGMENT FOR THE DEFENDANT BASED UP-

ON THE SEVERABILITY OF THAT PORTION OF THE CONTRACT DEALING WITH THE AIRPLANE.

In considering the question of fraud and misrepresentation the party seeking relief must allege and prove what representations were made, that they were false and known to be so by the party charged, and that the party seeking relief believed the representation to be true and that he acted upon them and was injured thereby.

In light of the foregoing, it must be said, based upon the findings of the court, that this was accomplished, and, therefore, the judgment finding severable that portion of the contract dealing with the airplane is erroneous. All of the evidence points to the fact that the airplane was represented to be essential to success of the total program that defendant outlined to Salisbury. The record is as follows:

Mr. Barker

“Q. Do you recall any other statements which he made to you?

Mr. Salisbury

“A. He stated that in order put forth this program, to put forth this program, to put it into effect and contact these salesmen throughout the state, that he had to have the Mooney airplane that he had at the time, and in order to put this program into effect it would be necessary for our company to assume the obligation that he had on this Mooney airplane so that he could fly it throughout the various places in the state and con-

tact these men that he had that would come with us.

“Q. Did he make any statements as to the use he had previously made of this airplane?

“A. He said that it had proven very valuable to him, and anytime I wasn’t convinced that it was a profitable venture to have an airplane, that he could get rid of it at any time without loss to us. That is to the company.

* * * *

Mr. Barker

“Q. I will get into specifics. As far as this airplane is concerned, did he not resist the inclusion of this airplane in the contract, in this contract all the way?

Mr. Hansen

“A. He did resist the inclusion of the airplane.

“Q. In the representations that were made on the airplane, did you not tell him that you had used this airplane extensively in the program that you had field tested?

“A. I told him that we had used it to our advantage.

“Q. And that if the present program that you were presenting to him for his acceptance was to be successful that you had to have that airplane?

“A. There wasn’t any hinge on the success of the program at all. The idea was that the airplane would facilitate matters, moving through the 11-state area that Reliance was in at that time much more rapidly and an easier problem than if I were to go to commercial airlines, and that was the only commitment, for that statement.

“Q. And did you not tell him that in your experience with airplanes and this particular type of airplane, that the airplane could readily be disposed of without loss?

“A. I never said anything like ‘without loss,’ because naturally there is natural depreciation.

“Q. Without loss other than depreciation?

“A. This would be the normal. ‘We can always sell it,’ were my terms as I recall it, and that was all.”

The airplane was therefore made an integral part of the misrepresented facts, and it is evident that the plaintiff would not have assumed the defendant’s equity in the airplane but for his grossly false statements.

Where a contract involves several parts, yet make up one transaction, fraud in one part vitiates the entire agreement. *Meredith vs. Ramsdell*, 384 P.2d 941, Colo. 2d

To the same effect is the case of *Anson vs. Grace*, 117 N.W. 2d 117 N.W.2d 529, 174 Neb. 2d 258.

Therefore, the court erred in granting the defendant the sum of \$2,500.00 as the unpaid portion of the price of defendant’s equity in the airplane.

POINT III

A JUDGMENT MAY NOT BE BASED UPON MERE CONJECTURE, SURMISE OR SPECULATION, AND THE COURT THUS

ERRED WHEREIN IT AWARDED A JUDGMENT FOR DEFENDANT FOR THE COMMISSIONS CLAIMED TO HAVE BEEN EARNED AFTER THE TERMINATION OF THE EMPLOYMENT CONTRACT.

The burden of proof requires the party carrying it to prove to the court the fact upon which his case depends, by a preponderance of greater weight of the credible evidence. To create a preponderance of evidence, the evidence must be sufficient to overcome the opposing proposition as well as the opposing evidence. The trier of a case, when doubts arise concerning the weight of the evidence, must find for the side whereon the doubts have less weight.

The only evidence offered by the defendant concerning the claimed commissions was his statement found on page 245 of the record, which is as follows:

“Q. By Mr. Tuft) As to commissions, Mr. Hansen, did you keep track of the commissions due you?

“A. I had no way because the company was keeping up most of those, but I do have track of the contracts and can calculate them, and that should be, in round figures, approximately \$1,000.00.

“Q. To the best of your belief, \$1,000.00?

“A. Yes.”

His excuse for not having more was, that all of the records concerning the sales and payments made there-

under were in the possession and control of the plaintiff. The plaintiff introduced all of its records. (See Exh.). There is contained in the record a summary of these records and it is found on pages 31 and 32. According to the corporation records, which are by far the best evidence, there is due to Mr. Hansen the amount of \$43.62.

A verdict may not lawfully be predicated upon mere conjecture or speculation, and in this case that is the only way the court could arrive at its conclusion.

The defendant, having the burden of proof insofar as the claimed commissions are concerned, was obligated to establish the fact alleged by evidence at least sufficient to destroy the validity of the corporate records. Can it be said that an estimate is sufficient to do this? The defendant did not, at any time, question the completeness of the corporate records, nor did he produce any records of his own to show that the records were not accurate.

Therefore, it would appear that there is no real evidence in the record upon which the court could justly find in favor of the defendant. From the evidence adduced at the trial the court erred in granting a judgment for the defendant for the sum of \$1,000.00, when in fact, there was only \$43.62 due.

CONCLUSION

This court should set aside the determination of the Lower Court that the plaintiff's complaint be dismissed "no cause of action" and award to the plaintiff the damages proved by a preponderance of the evidence, in the amount of \$20,107.30, because of the proven fact of fraud in the inducement of the employment contract. The court should also find that since the award to the defendant of \$2,500.00 was based upon the severability of that portion of the contract dealing with the airplane, from the contract as a whole, was wrong. The court should further find that if there is any amount due and owing to the defendant, that that sum does not exceed \$43.62 and that amount may be offset against the \$20,107.30, which the plaintiff has proven.

Respectfully submitted,

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