

1964

Reliance National Life Insurance Co. v. William P. Hansen : Brief of Respondent

Utah Supreme Court

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Recommended Citation

Brief of Respondent, *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

APR 13 1964

RELIANCE NATIONAL
LIFE INSURANCE COMPANY,

) Clerk, Supreme Court, Utah

Plaintiff and Appellant,

Case No.

vs.

) 10,003

WILLIAM P. HANSEN,

UNIVERSITY OF UTAH

Defendant and Respondent.

)

JUN 30 1964

RESPONDENT'S BRIEF

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Appealed from the Third Judicial District Court, in and
for Salt Lake County - Hon. Stewart M. Hanson, Judge

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RELIANCE NATIONAL)
LIFE INSURANCE COMPANY,

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Defendant and Respondent.)

RESPONDENT'S BRIEF

STATEMENT OF NATURE OF CASE

Reliance National Life Insurance Company, plaintiff in the lower court, appealed from a judgement, of the Third Judicial District Court in and for Salt Lake County, granting defendant William P. Hansen "no cause of action" from the plaintiff's claim and, further, granting defendant's counterclaim for monies due him by virtue of an additional contract of employment for commissions earned and for the sale of an airplane by the defendant to the plaintiff.

DISPOSITION IN THE LOWER COURT

The case was tried to the Court, resulting in a judgment for the defendant of "no cause of action on plaintiff's complaint" and the awarding of \$3,500.00 on two separate counts of defendant's counterclaim, from which the plaintiff appeals. The Court further found that the portion of the original contract dealing with the sale of the airplane was severable from the contract as a whole; that subsequent commissions were earned after the original contract of employment was terminated. The plaintiff appeals on the grounds that the judgement of the lower court is not supported by the Findings of Fact.

RELIEF SOUGHT ON APPEAL

Respondent, being defendant in the lower court, seeks to uphold the judgment of the lower court granting the "no cause of action" on plaintiff's complaint and the award in favor of the defendant on two separate counts of defendant's counterclaim.

STATEMENT OF FACTS

The respondent accepts the appellant's Statement of Facts as outlined in "Plaintiff's Brief" as being in substantial conformity with the Findings of Fact entered by the Court, with the following exceptions:

1. The defendant presented evidence which showed that the plaintiff did not take diligent care to inquire into the background and history of the defendant when the plaintiff had opportunity of ascertaining such background of the defendant, and the defendant requested the plaintiff to do so.

2. Respondent does not admit hereby that the representations charged to respondent were false; and fur-

ther, respondent does not agree that appellant has suffered any damage by reason thereof.

Respondent feels that although appellant has divided its argument into three points, all three points in reality relate to the same legal principles. Therefore, respondent will not answer appellant's arguments point by point, but will answer all points raised in "Plaintiff's Brief" under Point II hereof.

STATEMENT OF POINTS

POINT I. THE CONTRACT OF EMPLOYMENT BETWEEN THE PLAINTIFF AND DEFENDANT WAS NOT TERMINATED BECAUSE OF ANY MISREPRESENTATION BUT WAS TERMINATED ON OTHER GROUNDS, and THEREFORE NO DAMAGES NOR RESCISSION FOR FRAUD OR MISREPRESENTATION CAN BE CLAIMED BY THE PLAINTIFF.

POINT II. THE TRIAL COURT CORRECTLY RULED THAT THE CONTRACT FOR THE SALE OF THE AIRPLANE, and DEFENDANT'S CLAIM FOR COMMISSIONS WERE SEVERABLE FROM THE BASIC CONTRACT OF EMPLOYMENT.

ARGUMENT

POINT I. THE CONTRACT OF EMPLOYMENT BETWEEN THE PLAINTIFF AND DEFENDANT WAS NOT TERMINATED BECAUSE OF ANY MISREPRESENTATION BUT WAS TERMINATED ON OTHER GROUNDS, AND THEREFORE NO DAMAGES NOR RESCISSION FOR FRAUD OR MISREPRESENTATION CAN BE CLAIMED BY THE PLAINTIFF.

The trial court's Findings of Fact No. 9 set forth the reason for which defendant's employment contract was terminated by plaintiff as follows:

"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 aforesaid 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 control 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.

This finding clearly shows that the plaintiff did not terminate the defendant's contract because of fraud or any alleged misrepresentation but rather on other grounds. Therefore, the lower court was correct in denying the plaintiff damages or rescission on the grounds of fraud, inasmuch as fraud was not alleged nor found to be related to the cause of the termination of the employment contract.

POINT II. THE TRIAL COURT CORRECTLY RULED THAT THE CONTRACT FOR THE SALE OF THE AIRPLANE, AND DEFENDANT'S CLAIM FOR COMMISSIONS WERE SEVERABLE FROM THE BASIC CONTRACT OF EMPLOYMENT.

In its brief appellant cites the case of **Taylor vs. Moore, et al, 51 P.2d 222, 87 Utah 493**, and contends that it stands for the proposition that a contract induced by fraud is voidable at the option of the party injured by the fraud. However, this reflects only a portion of the holding in that case, and was taken out of context. Further reading of the Taylor case shows that the Court held that a person who has the opportunity of knowing facts constituting alleged fraud cannot be inactive and afterwards allege want of knowledge arising by reason of his negligence or laches. In this case, the evidence clearly shows that the plaintiff, or its president, Salisbury, did not investigate defendant's references. As set forth in Finding of Fact No. 4:

" . . . Salisbury made no search of defendant's past record." Further, from Salisbury's testimony at trial, and the testimony of the defendant, it appears that Salisbury had opportunity to check into the background of the defendant and was implored to do so by the defendant himself. It seems then, the plaintiff did not exercise diligent care to check into the background of the defendant Hansen, and thereby is guilty of

laches and precluded from later raising this objection against the defendant. This also seems implicit in the findings of the trial court that defendant was discharged for cause, and not by reason of any misrepresentations made at the time of his employment.

It is interesting to note that the Taylor case, as cited by the appellant, is quite explicit on the duties of the person complaining of fraud to investigate facts constituting the alleged fraud. Therefore, the trial court's finding in Finding of Fact No. 5, that Salisbury did not know until three months later of any misrepresentations, is indicative of the plaintiff's inaction and negligence in checking on the representations of the defendant.

Notwithstanding the fact that fraud might be found in the basic employment contract, the question that is foremost before this Court is whether or not such fraud affected the agreement for the sale of the airplane and the payment of the defendant of commissions earned subsequent to the termination of the basic employment contract. There have been several tests outlined by the courts and legal texts to determine whether or not portions of contracts are severable and whether, if the contracts are found to be severable, fraud in one portion would travel to other portions of the contracts. The general rule seems to be that the tests for severability evolve upon intention, divisibility of subject matter, and apportionment of consideration (See 17 A Corpus Juris Secundum, Contracts Secs. 331-335.) With respect to the instant case each test is met as follows:

1. **Intention:** It is clear from the evidence that the intention was to make a separate contract for the sale of the airplane on terms different from the defendant's employment contract. This is evidenced by the fact that from the outset plaintiff was in-

interested in the possibility of re-sale of this aircraft, even though its intention was that the defendant would still be working for plaintiff. Therefore, it appears that the intention of both the plaintiff and the defendant was that the disposition of the aircraft would not automatically terminate defendant's employment contract with plaintiff. Thus, the parties clearly intended the contract to be severable. (See **Baker vs. Jones**, 240 P. 2d 1165, 1171; 69 Wyo. 314.)

2. Divisibility of Subject Matter: It is clear from the record that the plaintiff and defendant were dealing with two different subject matters, to wit: insurance sales vis-a-vis the sale of an airplane. The case of **Coppedge vs. Leiser**, 229 P. 2d 977, 71 Ida. 248, outlines the divisibility of subject matter as a valid test to determine the severability of portions of a contract. It is clear from the record that this contract in question meets the tests of divisibility of subject matter, and therefore the sale of the airplane and the commissions paid are severable from the basic employment contract.

3. The Apportionment of Consideration and Method of Payment: The rule that where a contract calls for a different mode of payment or an apportionment of consideration among different parties, schedule of payment or apportionment is a valid criteria upon which to base a decision that portions of the contract are severable from one another. In the cases of **Simmons vs. California Institute of Technology**, 209 P. 2d 589, 34 C. 2d 264, and **Sweet vs. Watson's Nurseries**, 73 P. 2d 284, 23 Cal. App 379, the test was outlined whereby apportionment of consideration was used to determine that portions of interests were severable. Applying this to the present case, the basic employment contract called

for one means of compensation for the purchase of the aircraft, to and including continued payments to a third party for future payments on the aircraft, and a separate means of compensation to the defendant for duties as a Sales Manager. As to the sale of policies after termination of the basic employment contract, still another method of compensation and mode of payment was devised.

It is the respondent's argument that, based upon the tests as outlined above and the tests as outlined in **12 Am. Jur. Contracts 315-316**, the case at hand clearly fits within the rule that even though an agreement embrace several particulars about one affair and be reached through one agreement, it may yet have the nature and operation of several different contracts and be treated as severable portions of a basic contract. **U. S. vs. Bethlehem Steel Corporation, 315 U. S. 389, 86 L. ed. 855, 62 S. Ct. 581.**

Since the agreements pertaining to the sale of the airplane and to the commissions earned after termination of the employment contract are severable from the basic employment contract, any fraud that may exist with respect to the basic employment contract does not carry over and apply to the severable portions. Any misrepresentation as to the basic contract was not material as to the severable portions, and therefore should not apply so as to make voidable those portions of the contract dealing with the sale of the airplane and the commissions earned. (See **Hecht vs. Metzler, 14 Utah 408, 48 Pac. 37.**)

Furthermore, there was no fraud proved or even alleged in the lower court as to the sale of the airplane. In light of the case of **U. S. vs. Arrendondo, 6 Pet. (U.S.) 691, 8 L. ed. 547**, the fraud must be relevant to the subject matter of the contract in order to apply.

With respect to the \$1,000.00 awarded respondent for commissions earned subsequent to the termination of respondent's employment contract, respondent asserts that appellant has accepted the benefits of sales giving rise to the commissions and that to permit appellant to defeat respondent's claim thereto by reason of some unrelated misrepresentations will unjustly enrich appellant. The trial court found the amount of commissions earned subsequent to the termination of the basic employment contract to be \$1,000.00. This is supported by evidence in the record, as set forth in the extract quoted on page 18 of appellant's brief. It is true that appellant presented conflicting evidence. However, appellant did not object to respondent's testimony and the trial judge chose to believe the evidence of the defendant supporting this amount. The respondent believes the findings of the trial judge, that the amount in dispute was actually \$1,000.00 owed to the defendant, should be upheld on the ground that the trial judge was in the best position to observe and determine the reliability of the witnesses and the accuracy of the evidence offered by them.

CONCLUSION

The respondent respectfully submits, that the findings and decisions of the lower court were reasonable and in accordance with law; and further submits that the Findings of Fact and Conclusions of Law should be upheld.

Respectfully submitted,

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