

1964

The Reliance Insurance Co. v. Glennard M. Hollins : Brief of Appellant

Utah Supreme Court

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Recommended Citation

Brief of Appellant, *Reliance Insurance Co. v. Hollins*, No. 10087 (Utah Supreme Court, 1964).

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IN THE SUPREME COURT

of the
STATE OF UTAH

FILED
MAY 26 1964

THE RELIANCE INSURANCE
COMPANY, a corporation

Plaintiff,

vs.

GLENNARD M. HOLLINS,

Defendant.

Supreme Court, Utah

Case No.
10087

APPELLANT'S BRIEF

Appeal From Judgment of The Third District
Court For Salt Lake County,
Hon. Marcellus K. Snow, Judge

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TABLE OF CONTENTS

	Page
STATEMENT OF KIND OF CASE	1
DISPOSITION IN LOWER COURT	1
RELIEF SOUGHT ON APPEAL	2
STATEMENT OF FACTS	2
ARGUMENT	
POINT I. THE FINDINGS OF THE COURT ARE NOT DETERMINATIVE OF THE ISSUES RAISED BY THE PLEADINGS AND DO NOT SUPPORT THE JUDGMENT RENDERED.....	5
CONCLUSION	10

CASES CITED

General Credit Company v. Reliance Insurance Com- pany of Philadelphia, Third Judicial District Court for Salt Lake County, State of Utah, Civil No. 106828	4, 6, 7, 8, 9
Rosenthyne v. Matthews-McCullough Co., 51 Utah, 38, 168 Pac. 957 (1917)	8
State v. Parker, 13 U 2d 65, 368 P.2d 585 (1962)	8
Stockyards National Bank of South Omaha v. Bragg et al, 75 Utah 60, 245 Pac. 966 (1925)	8

STATUTES CITED

Section 41-1-65, U.C.A., 1953	7
Section 41-3-18, U.C.A., 1953	3

IN THE SUPREME COURT
of the
STATE OF UTAH

THE RELIANCE INSURANCE
COMPANY, a corporation

Plaintiff,

vs.

GLENNARD M. HOLLINS,

Defendant.

Case No.
10087

APPELLANT'S BRIEF

STATEMENT OF KIND OF CASE

This is an action by a surety to recover from an indemnitor under an indemnity agreement for expenses and legal fees incurred by the surety by reason of its having executed a Motor Vehicle Dealers Bond as surety.

DISPOSITION IN LOWER COURT

The defendant was granted summary judgment upon the grounds that a judgment rendered in a previous action in which General Credit Company sued the plaintiff herein upon the Motor Vehicle Dealer's Bond mentioned above for loss resulting from the default of Glenn Hollins, Inc., principal upon said bond, was res judicata of plaintiff's right

to recover from the defendant herein who is an individual indemnitor.

RELIEF SOUGHT ON APPEAL

Plaintiff seeks a reversal of the lower court's judgment in favor of the defendant and prays for judgment in its favor as a matter of law as to its right to recover from the defendant as an indemnitor on the bond in question and that the action be remanded to the lower court for trial to allow plaintiff to prove its damages, or that failing, for a new trial on all issues.

STATEMENT OF FACTS

On June 20, 1954, the defendant, Glennard M. Hollins made application to the plaintiff for a motor vehicle dealer's bond to be issued in the name of Glenn Hollins, Inc., principal, and upon which the plaintiff would appear as surety. The application contained an indemnity agreement which was signed by the defendant in his individual capacity, whereby he agreed to reimburse and indemnify the plaintiff for any loss, damage, or expense which it might incur or sustain as a result of having executed said bond (R. 24-25). In consequence of said application, plaintiff issued its bond as surety thereon effective July 6, 1954 (R. 21).

Glenn Hollins, Inc., subsequently floor planned certain automobiles with General Credit Company, a financial institution. Under such an arrangement, the financial institution would hold title to said

automobiles but deliver possession thereof to the dealer for the purpose of selling the same. When a sale was completed, the dealer would payoff the existing obligation with the financial institution for the automobile sold and the financial institution would deliver the title thereof to the dealer for delivery to the purchaser (R. 14-15).

On October 25, 1954, Glenn Hollins, Inc. sold a 1952 Buick to one Irene Pittingall; and on December 12, 1954, it sold a 1953 Oldsmobile to one J. C. Miller (R. 17). For reasons unknown to appellant, Glenn Hollins, Inc. was unable to deliver title certificates for said automobile to the purchasers thereof since General Credit Company refused to surrender the same. However, General Credit Company eventually on or about April 15, 1955, delivered the title certificates directly to the purchasers of the automobiles in question (R. 18).

On November 15, 1955, General Credit Company filed an action against the plaintiff and appellant herein in the Third Judicial District Court for Salt Lake County, State of Utah, Civil No. 106828, alleging conversion of the aforementioned automobiles by Glenn Hollins, Inc., to its damage in the sum of \$3,282.00 and that the defendant, plaintiff and appellant herein, was liable to it as surety on the motor vehicle dealer's bond pursuant to the provisions of Section 41-3-18, Utah Code Annotated, 1953 (R. 1-3).

The Trial Court in that action granted judg-

ment in favor of the defendant, plaintiff and appellant herein, no cause of action, after finding the following facts:

(a) That Glenn Hollins, Inc. was in possession of the 1952 Buick automobile and the 1953 Oldsmobile automobile with the knowledge and consent of General Credit Company and disposed of the same through resale in the regular course of business with the knowledge and consent of General Credit Company (R. 17 para. 5 & 6).

(b) That Glenn Hollins, Inc. did not willfully, wrongfully, or without the knowledge and consent of General Credit Company dispose of the automobiles in question (R. 17 para. 7).

(c) That Glenn Hollins, Inc. did fail, neglect and refuse to pay General Credit Company the amount owing on the aforementioned automobiles at the time of their resale (R. 17 para. 8).

Subsequently, the present action was commenced by the plaintiff and appellant herein, to recover from the indemnitor Glennard M. Hollins for costs and expenses which it had suffered by reason of having executed the motor vehicle dealer's bond as surety (R. 19-25). The matter came on regularly for hearing on January 20, 1964, but before the trial commenced, defendant made a motion to dismiss on the grounds that the findings and judgment in the prior case of *General Credit Company vs. Reliance Insurance Company of Philadelphia*, Third

Judicial District Court for Salt Lake County, State of Utah, Civil No. 106828, were res judicata to the issues raised in the present action and that as a matter of law the plaintiff could not recover. The trial court granted this motion and entered judgment in favor of the defendant. (R. 35).

Appellant made a timely motion that the trial court amend its findings, conclusions of law, and judgment, and for a new trial to allow the appellant to prove its damages (R. 36-40), but the motion was denied (R. 41).

ARGUMENT

POINT I.

THE FINDINGS OF THE COURT ARE NOT DETERMINATIVE OF THE ISSUES RAISED BY THE PLEADINGS AND DO NOT SUPPORT THE JUDGMENT RENDERED.

Plaintiff's cause of action is based on a contract between the parties. The basic allegations of the complaint (R. 19-25) are that plaintiff executed and issued as surety a Motor Vehicle Dealer's Bond (Para. 3), that the defendant, Glennard M. Hollins, executed the application for said bond (Para. 4) which contained an indemnity agreement as set forth in Exhibit "B" to the complaint, and that the plaintiff was subject to a law suit and sustained damage by reason of its having executed said bond (Para. 7).

It is admitted that the complaint in paragraphs 5, 6, and 7 incorrectly designates the defendant as

the person which made the sales of the two cars in question, received the monies therefor, and was unable to deliver the titles thereto, rather than the corporation Glenn Hollins, Inc., defendant's alter ego. However, plaintiff attempted to correct this drafting error by its proposed findings of fact which correctly designate Glen Hollins, Inc. as the party responsible for these acts. The trial court should have granted plaintiff's motion to include the findings set forth by it since they were all facts that were either not denied in the pleadings or were found by the court in the *General Credit Company vs. Reliance Insurance Company of Philadelphia* case.

The fact that plaintiff's complaint incorrectly stated the defendant as the tort-feasor rather than the corporation, Glenn Hollins, Inc., should not be considered fatal to plaintiff's cause of action because the action alleged by the plaintiff in its complaint is one based on contract, i.e., the indemnity agreement contained in the application for the used motor vehicle dealer's bond; it is not a tort action. The reference to the defaults as alleged in paragraphs 5 and 6 of plaintiff's complaint merely state *why* plaintiff was sued upon its bond as surety. These allegations are actually items which could have been left for evidence at trial since plaintiff's complaint would have been sufficient if it alleged only (a) that the plaintiff executed the bond in question as surety, (b) that defendant agreed to indemnify the

plaintiff for any expense, loss, or damage which it experienced by reason of having executed said bond, and (c) that plaintiff had sustained a loss because of having executed said bond.

The findings, conclusions of law, and judgment of the trial court as they now stand are not responsive nor determinative of plaintiff's claims for reimbursement under the indemnity agreement. The findings merely set forth that the trial court found in the prior action of *General Credit Company vs. Reliance Insurance Company of Philadelphia, supra*, that the defendant in this action, Glennard M. Hollins, did not commit the acts which caused the plaintiff and appellant herein to be sued as surety on the motor vehicle dealer's bond and that Glenn Hollins, Inc. did not violate provisions of Section 41-1-65, U.C.A., 1953 with respect to General Credit Company. They include no findings as to whether or not the defendant, Glennard M. Hollins, agreed to indemnify the plaintiff for expenses incurred by reason of its having executed said bond or whether the plaintiff incurred expenses or loss as a result of having executed the bond. The principal issue in this case is not whether the defendant, Glennard M. Hollins, caused the damages which plaintiff claims to have suffered, but whether he agreed to reimburse the plaintiff for any loss it might suffer by reason of having executed the bond in question. This issue was not determined by the trial court in the instant case since the only evidence introduced at

the hearing of defendant's motion to dismiss was the file in the prior case of *General Credit Company vs. Reliance Insurance Company of Philadelphia, supra*, and at no place in the pleading, findings, or judgment rendered in that action was the issue of indemnity raised or determined. And, in fact, it could not have been since defendant herein was not a party to that action and no rights against him could have been determined. This point was recently affirmed by this court in a condemnation proceeding *State vs. Parker*, 13 U. 2d 65, 368 P.2d 585, (1962).

Further, it appears to be a well settled rule that a judgment which goes beyond the pleadings is invalid. In *Rosenthyne vs. Matthews - McCoulough Co.*, 51 U. 38, 168 Pac. 957 (1917) the trial court ordered the plaintiff to repay to the defendant a certain sum of money for which relief was not prayed in the answer, and this Court quoting 23 Cyc. 816 at page 43 stated:

“A judgment must accord with and be warranted by the pleadings of the party in whose favor it is rendered; if it is not supported by the pleadings, it is fatally defective.:

Likewise, this Court stated in *Stockyards National Bank of South Omaha vs. Bragg et al*, 76 U. 60, 245 Pac. 966 (1925) at page 81:

“It is fundamental that a petition or pleading of some kind is the juridical means of vesting the Court with jurisdiction of subject matter to adjudicate it, and a judgment which is be-

yond or *not supported by the pleadings must fall.*" (Emphasis added)

In both of the foregoing cases, the trial court had granted affirmative relief outside the pleadings and this Court held that such judgment was invalid. It is appellant's position that judgment denying relief based on findings which do not determine the essential allegations of the complaint is, likewise, a judgment rendered outside the pleadings, and therefore, invalid.

As previously stated, the only evidence introduced at the hearings before the trial court was the file in *General Credit Company vs. Reliance Insurance Company of Philadelphia, supra*, and the judgment rendered in the instant case reflects this fact (R. 35) in that it states in part:

"The entire file and evidence in Civil No. 106828 was received into the evidence, E. L. Schoenhals having moved the Court for a dismissal with prejudice in behalf of defendant and stated the basis for said motion into the record and invited the Court's attention to the pleadings, facts and evidence and advised the Court on the law"

Defendant and respondent has previously raised the defense that the plaintiff and appellant herein should have sued the principal on the bond in question, Glenn Hollins Inc., and recovered an unsatisfied judgment before pursuing the defendant. Whether such a procedure is generally legally necessary or not is moot because as the records of the

Secretary of State for the State of Utah show, the charter of said corporation was revoked on September 21, 1956 for nonpayment of taxes, over two and one half years before this action was commenced.

CONCLUSION

Appellant contends that its right to recover from the defendant on the indemnity agreement incorporated as part of plaintiff's complaint has never been determined in this or any other lawsuit and the trial court erred in granting summary judgment to the defendant and respondent herein.

WHEREFORE, appellant prays that the judgment of the trial court be reversed and prays for judgment in its favor as a matter of law to its right to recover from the defendant on the indemnity agreement in question and that the action be remanded to the trial court to allow plaintiff to prove its damages, or that failing, for a new trial on all issues.

Respectfully submitted,

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