

1964

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

Utah Supreme Court

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IN THE SUPREME COURT
of the **STATE OF UTAH**
29 1964

BRIEF OF RESPONDENT AND DEFENDANT

THE RELIANCE INSURANCE
COMPANY, a corporation,
Plaintiff and Appellant,

vs.

GLENNARD M. HOLLINS,
Defendant and Respondent.

Case No. 10087

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BRIEF OF PLAINTIFF AND APPELLANT

GLENNARD M. HOLLINS,
Plaintiff and Appellant,

vs.

THE RELIANCE INSURANCE
COMPANY, a corporation,
Defendant and Respondent.

Supreme Court
Case No. 10168

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} Case No. 10087

FACTS

I

Glenn Hollins, Inc., hereinafter referred to as Hollins, Inc. was a corporation engaged in used car sales in Ogden, Utah in 1954. Glennard M. Hollins was the president and a director of Hollins, Inc.

Hollins, Inc. was licensed as a used car dealer and to secure said license had complied with 41-3-16 DEALERS BOND: which requires a \$5,000.00 bond with a corporate surety to protect customers from any violation of the provision of the motor vehicle act by the dealer.

The Reliance Insurance Company, hereinafter referred to as Reliance, issued the dealer's bond to Hollins, Inc. to license it to do business (Judgment R 17, P 4).

General Credit Company, a corporation, was a credit company financing the used car operation of Hollins, Inc.

Hollins, Inc. sold a Buick to Miller and an Oldsmobile to Pettingell in 1954. General Credit held titles to said cars and Hollins, Inc. claimed to have paid General Credit all sums received from the purchasers on said transactions (R 12).

General Credit refused to deliver titles to said cars to Miller and Pettingell.

II

FIRST CASE: ALL ISSUES ADJUDICATED FAVORABLE TO RELIANCE AND NO APPEAL TAKEN.

In Civil No. 106828, hereinafter referred to as the first case, General Credit sued Reliance on said bond covering Hollings, Inc., a corporation, in which it alleged:

1. Reliance had issued a motor vehicle DEALER'S BOND to Hollins, Inc., pursuant to 41-3-16 (R 1, P 3).

2. Hollins, Inc. had sold an Oldsmobile and a Buick and had failed to deliver certificates of title therefore, in violation of 41-1-65 and 41-3-23(D), and by reason thereof Reliance was liable to General Credit on the bond of Hollins, Inc. as provided for in 41-3-18 (R 1-3).

In its answer Reliance (a) admitted it issued

said bond to Hollins, Inc., the dealer corporation, under 41-3-16 (R 4, P 2), (b) Reliance filed the affidavit of Glennard M. Hollins as a corporate officer of Hollins, Inc. (R 12), and (c) had its attorney also represent Glennard M. Hollins during the taking of his deposition under subpoena (R 11).

In *General Credit vs. Reliance*, or the first case, the Court entered its decision and found:

1. Hollins, Inc. was a corporation duly licensed to do business and said bond had issued to enable said corporation to secure a license pursuant to 41-3-16 (R 17, P 4).

2. Hollins, Inc., the corporation, sold the Buick and Oldsmobile involved (R 17).

3. Hollins, Inc., the corporation, did not violate 41-1-65 or 41-3-23(D) for failure to deliver title (R 18).

4. Complaint of General Credit was dismissed (R 16-17).

III

SECOND CASE: RELIANCE vs. HOLLINS, CASE No. 121386 RELIANCE SEEKS RECOVERY FOR ITS INVOLVEMENT IN FIRST CASE, BUT REQUESTS THE SAME COURT TO FIND DIRECTLY CONTRARY ON ALL ISSUES AS DETERMINED IN THE FIRST CASE. FROM DISMISSAL OF SECOND CASE RELIANCE APPEALS.

Alleging that Hollins as an individual made said sales and agreed to indemnify Reliance for the loss under said first case 106828 aforesaid, the defendant Reliance in first case became plaintiff in an action 121386, referred to as the second case, wherein Reliance sued Glennard M. Hollins as an individual; and in said action Reliance alleged:

1. Glennard M. Hollins as an INDIVIDUAL, hereinafter referred to as Hollins, sold the same two automobiles theretofore determined as having been sold by the corporation in the first case 106828 (R 19 and 20).

2. The sales made by Hollins as an individual were in violation of statutes by reason of his failure to deliver titles therefor (R 20, P 7).

3. Reliance was compelled to pay \$367.00 by reason of said Hollins' failure to deliver titles and by reason thereof said Reliance was subjected to the law suit 106828, or the first case (R 20, P 5 and 6). The application and bond were attached to the complaint.

The pretrial order provided that the plaintiff's pleadings stated the issues of plaintiff's case (R 31).

At the trial *Reliance vs. Hollins* or Civil 121386, the second case, and the one here under consideration, the entire file of the first case, *General Credit vs. Reliance Insurance Company*, 106828, was received into the evidence (R 32).

Counsel for Reliance admitted to the Court that Reliance had no evidence that it paid \$367.00 or any other sum by reason of failure of Hollins or Hollins, Inc. to deliver titles.

Counsel for defendant Hollins moved the Court for dismissal of plaintiff's complaint. Counsel for Reliance at no time asked leave to amend its pleadings and submitted the matter on issues as plead by it for the Court's decision.

The Court entered findings and judgment in the second case, 121386, and found the same as it had thereto found in the first case, its findings in the second case being found at R 33 as follows:

1. A Dealer's Bond issued to enable Hollins, Inc. to secure its license.

2. Hollins did not sell the cars to the parties named in plaintiff's complaint and Hollins was not in violation of 41-1-65 or applicable statutes for failure to deliver titles involving said sales.

3. Neither Reliance nor Hollins as an individual were subjected to a law suit by reason of the sale of said automobiles, because Hollins did not deliver titles therefor (R 33, P 9).

4. Reliance's case was dismissed.

Reliance appeals therefrom.

IV.

ARGUMENT

FIRST CASE

General Credit vs. Reliance

Civil No. 106828

Court Findings — see *R 17*

1. Bond issued for corporation.
2. Hollins, Inc. sold cars.
3. Hollins, Inc. no violation.
4. Action against Hollins, Inc., dismissed.
5. Reliance required to pay no money.

(Issues here determined at request of Reliance as defendant are *res judicata*)

SECOND CASE, CASE
AT BAR — Supreme Court
No. 10087 — *Reliance vs.
Glennard M. Hollins* —
Civil No. 121386. Allega-
tions in Plaintiff's Com-
plaint — see *R 19*

1. Hollins as individual was principal on bond.
2. Hollins as individual sold cars.
3. Hollins as individual was violator.
4. Hollins as violator subjected Reliance to suit.
5. Reliance paid money for Hollins' violation for failure to deliver title.

(Reliance seeks to recover on false facts, all facts being contrary to decision in its favor in former action)

The Court's attention is invited to the following facts:

1. The District Court in 106828, the first case, found the \$5,000.00 bond issued under 41-3-16 was not an individual's bond but a Dealer's bond. The Court found that Hollins, Inc. was the principal and Reliance was the surety on the bond. Moreover, the application (R 24 line 10) shows it was for a bond in which the corporation was principal, and not for Hollins individually as principal or as surety. In said application where is printed, "Names of officers if applicant is corporation", officers are named (R 25).

41-3-17 provides for a bond for an individual in the amount of \$1,000.00, which would have to have been applied for and issued to Hollins individually to qualify him and before he could personally be subjected to liability either as principal or surety.

While the first case 106828 is not before this Court for consideration, it is obvious the District Court in making the abovestated findings found that although no words of official capacity appear below the signature of Glennard M. Hollins, the Court was convinced from the evidence adduced and the deposition that the application was in fact signed by him as an officer of the corporation and not as an individual. This is true, since there is no other signature of any other officer appearing on said application.

It is preposterous for the appellant Reliance to represent to this Court FOR THE FIRST TIME ON APPEAL that it should have had judgment in the second case, 121386, against Hollins as a surety notwithstanding there was no pleading to justify recovery on such basis and with said application having been adjudicated as having been made by an officer of the corporation (R 17), in the first case *General Credit vs. Reliance*, the court adjudicated Hollins, Inc. as the principal and Reliance the surety. In the second case Reliance seeks to recover against Hollins as an individual on the agreement (R 25) which agreement is obviously an agreement by the principal Hollins, Inc. to reimburse the surety Reliance for a loss — sustained by Reliance and caused by fault of the principal Hollins, Inc. Even if the District Court in 106828 had not so found, Reliance could not possibly even by torturing said agreement impose liability upon Hollins under the terms thereof as principal or surety.

Moreover, even if the case of *General Credit vs. Reliance* had been appealed, the appellate court would have held that an instrument prepared by an insurance company would be strictly construed against it and the application shows Hollins did not sign either as a surety or as a principal; and under the terms of the application itself no such intention was expressed or could be claimed; moreover, since Hollins did not make the sales, there could be no liability on him in any event since the

claims of Reliance in the second action, is predicated on sales of cars made by Hollins as an individual (R 19 P 5 and 6).

During all proceedings under the first case, *General Credit vs. Hollins*, the same counsel represented all three parties in opposing General Credit and there was a confidential relation of attorney and client between Reliance, Hollins, Inc. and Hollins as an individual, when the same counsel prepared and filed an affidavit signed by Glennard M. Hollins certifying that he was president and a director of the corporation Hollins, Inc., and that Hollins, Inc. paid General Credit all money received from the sales of said cars (R 12), and when the same counsel represented Hollins when his deposition was taken under subpoena (R 11). Neither Hollins, Inc. nor Hollins had representation other than *the same* counsel who also represented Reliance.

Reliance is charged with the knowledge that Hollins signed the application (R 25) as is asserted in (R 26) 121386 only as an officer and not individually and Reliance admitted this in its answer in 106828, R 4, P 2) and the Court so found (R 17, P 4).

The entire gist of the action in the first case is based upon the liability of Reliance for failure of Hollins, Inc. to deliver titles for cars sold by Hollins, Inc. in violation of statute. General Credit alleges that since Reliance bonded Hollins, Inc. (not Hollins as an individual) that Reliance was liable

under said bond of Hollins, Inc. by virtue of liability imposed by statute 41-3-18 (R 3, P 7).

In order to have jurisdiction of the subject matter in *General Credit vs. Reliance*, the Court had to conclude 1. That the bond was applied for and issued to the corporation; 2. The corporation made the sale; and 3. That the corporation was nevertheless not in violation of law for failure to deliver title. Moreover, Reliance requested in its pleadings said judgment as entered, and Reliance relied upon said judgment to terminate its liability under said bond, and is estopped to assert otherwise.

Reliance through the judgment and confidential relation existing and under pleading on issues plead and raised by Reliance *inter se* is charged and bound with the fact that the Court determined there was no violation of law in failure of even the corporation to deliver titles to the purchasers of the cars involved. Reliance is also charged with the knowledge that it paid no sums whatever to J. C. Miller, to Irene Pettingell or to any other person for failure of either Hollins, Inc. or Hollins to deliver titles in violation of statute, which claim is the entire gist of its action on the second case. Moreover, all issues were adjudicated, determined and found and delineated in favor of Reliance in the first action and at its request on pleadings *inter se* where it was the very party who raised said issue and put on

evidence to support said findings and judgment and moved the Court to enter the same as it was entered.

Every fact plead by Reliance in its second case is in direct conflict with the findings and judgement of the District Court, and all facts alleged are false, and so known to be false by said Reliance and by its counsel, which counsel was enjoying a confidential relation with both Hollins and Reliance in said first action.

WHEREFORE, respondent prays that the judgment of the Honorable Marcellus K. Snow be affirmed with costs to respondent.

Respectfully submitted,

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IN THE SUPREME COURT
of the
STATE OF UTAH

BRIEF OF PLAINTIFF AND APPELLANT

GLENNARD M. HOLLINS,
Plaintiff and Appellant,

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Defendant and Respondent.

} Supreme Court
Case No. 10168

STATEMENT OF KIND OF CASE

This is an action to recover from a litigant who plead defamatory actionable statements against Hollins when said statements had in prior litigation to which said pleader was a party been adjudicated false.

DISPOSITION IN LOWER COURT

Complaint was dismissed for failure to state a claim.

RELIEF SOUGHT

Reversal of judgment of dismissal, and judgment for appellant on the pleadings determining liability of Reliance.

I
FACTS

All of the facts recited in *Reliance, Appellant*

vs. Hollins, Respondent, Supreme Court Case 10087, are hereby made a part of this brief.

Subsequent to the entry of judgment in the second case. *Reliance vs. Hollins*, from which Reliance appealed, or Supreme Court No. 10087, Glennard M. Hollins, on March 11, 1964, filed an action in the District Court of Salt Lake County entitled *Glennard M. Hollins vs. Reliance Insurance Company*, Civil No. 148788, which was the third case in the trial courts in a series of cases involving the parties. In this third case, Hollins asserted as the gist of his action that having been wrongfully subjected to said litigation, in the second action wherein Reliance asserted false, libelous, defamatory actionable statements against him and charged him with a crime; to-wit, violation of 41-3-2 and 41-3-3 that his credit relations and responsibility had been thereby destroyed and he had been damaged and by reason thereof he had been deprived of earning a living or securing employment.

In said action, Hollins seeks to recover from Reliance based upon all facts asserted in the forepart of this brief. Hollins had no independent legal counsel and had made full and complete disclosures and reposed confidence in said attorneys, who at that time also had a confidential relation with Reliance. He alleged that in total disregard of said confidential relation and the findings and judgment as entered in favor of Reliance in the prior case, and well knowing all facts it asserted were false,

Reliance nevertheless did wilfully and maliciously harass, embarrass and subject him to said action. To Hollins' complaint in said third action was attached as Exhibits the Judgment in the first action and the Complaint of Reliance, including as Exhibits the Judgment in the first action and the Complaint of Reliance, including as Exhibits the application or the pleadings as filed by Reliance suing Hollins as an individual in the second action R 1-21

Reliance filed its Motion to Dismiss, R 29, asserting that the facts recited by Hollins in said Complaint did not state a claim upon which relief could be granted. The matter came on for hearing and argument and the Court entered its order dismissing said Complaint in said third action with prejudice. It is from said Order of Dismissal R Hollins here appeals.

II ARGUMENT

Appellant adopts all argument in the preceding case and makes the same a part of this argument.

III POINT I

RELIANCE WAS STRIPPED OF IMMUNITY AND PROTECTION ACCORDED STATEMENTS IN JUDICIAL PROCEEDINGS WHERE FORMER JUDGMENT TO WHICH IT WAS A PARTY RENDERED SAID STATEMENTS FALSE.

The Reliance Insurance Company disregarded the prior judgment of the District Court rendered

in its favor in the first action and asserted facts exactly opposite to the former judgment as shown, see IV, page 6 forepart of brief under Argument.

Reliance did nevertheless subject Hollins to a lawsuit in which Reliance charged Hollins with a criminal offense and false facts, despite the fact a prior determination by the District Court rendered, as requested by Reliance, had adjudicated and determined otherwise.

While there is some authority extending privilege to parties stating false facts in judicial proceedings, the better view as stated at 33 Am. Jur. 146 is:

“The privilege in these jurisdictions does not extend to matters known to be false.” (See note 5 for cases)

Counsel can find no case or authority protecting a litigant in judicial proceedings from liability for defamation or other actionable statements, where in a prior judicial proceedings to which said litigant was a party, a determination had been made which would render said statements false.

Moreover, as stated in the case of *Harshaw vs. Harshaw*, 16 S. E. 2d 666, 136 A. L. R. 1411:

“The defendants were stripped of the protection accorded statements in judicial pleadings by the former judgment to which they were parties and to which they agreed, and may not now be heard to claim privilege for the publication of defamation which it thus had been judicially established was false.”

Public respect for the Courts could be enhanced when the Courts having determined a matter then relieve the public from further harassment over the same issue and make actionable any subsequent flagrant publication in complete disregard of issues by the Court theretofore resolved.

This should be particularly true when the issues were resolved favorable to and the Order prepared by the offender.

Moreover, the Court could well consider the action of Reliance reprehensible where it not only asserted false facts dis regarding a judgment in its favor, but also asserted false facts known to be false under the confidential relation that existed.

The allegations of the Complaint in the third case are substantiated by Exhibits and the Judgment in the first case is made an Exhibit, R.11, and the complete Complaint and Exhibits filed by Reliance in the second case R.14 are attached to the complaint filed by Hollins and which Complaint the lower court dismissed. Said facts are set forth in the pleadings and made a part of the public record and may not be altered or changed. Under the authorities cited above, together with malice being presumed under such circumstances (see 53 C. J. S. 125), this Court could expedite the administration of justice and relieve Hollins from being further involved in another appeal by not only reversing the lower Court but by also ordering judg-

ment on the pleadings for Hollins, as to liability of Reliance.

WHEREFORE, appellant Hollins prays that the lower court be reversed, and the case be reinstated with instructions that Hollins have summary judgment on the issue of liability of his claim against Reliance.

Respectfully submitted,

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