

1983

Southeastern Equipment Co., A Georgia Corporation And William Gochis, Intervenor v. James Mauss And Engleharde Mauss dba Jim's Surplus And Storage : Brief of Appellant

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IN THE SUPREME COURT OF THE STATE OF UTAH

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SOUTHEASTERN EQUIPMENT CO., a :
Georgia Corporation and
WILLIAM GOCHIS, Intervenor, :

Plaintiff-Respondent, :

vs. : Case No. 19041

JAMES MAUSS and ENGLEHARDE :
MAUSS d/b/a/ Jim's Surplus
and Storage, :

Defendant-Appellant. :

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BRIEF OF APPELLANT

Appeal from the Judgment of the Third Judicial District Court
of Tooele County, the Honorable Scott Daniels, Judge, presiding.

BARRIE A. VERNON
275 South Main Street
Tooele, Utah 84074
Counsel for the Appellant

DOUGLAS F. WHITE
Prudential Plaza
185 North Main Street
Suite B-1
Tooele, Utah 84074
Counsel for the Respondent

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MAUSS d/b/a/ Jim's Surplus :
and Storage, :
Defendant-Appellant. :

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BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

An agreement was reached between Appellant and the Respondent to satisfy a judgment the Respondent rendered in May, 1975. Respondent denied that the agreement reached the level of a contract and sought to execute on the judgment by noticing up the sale of the Appellant's real property to satisfy the judgment by way of a Sheriff's Sale.

DISPOSITION IN THE LOWER COURT

The Appellant's Motion to Enjoin the Sheriff's Sale was heard before the Honorable Scott Daniels in the Third Judicial District Court on February 15, 1983. The Court denied the Appellant's request to enjoin the Sheriff's sale.

RELIEF SOUGHT ON APPEAL

Appellant, Engleharde Mauss, seeks reversal of the court's ruling thereby granting the motion to permanently set aside the Sheriff's sale and uphold the existence of an enforceable contract between the Appellant and the Respondent.

STATEMENT OF FACTS

In 1974, Southeastern Equipment Company sued James J. Mauss, Engleharde Mauss d/b/a Jim's Surplus and Storage to recover monies loaned to Jim Mauss. William Gochis intervened as Plaintiff claiming he had a promissory note from the Mausses dated October 12, 1974, in the sum of \$9,800.00, to be paid on November 12, 1975. On May 12, 1975, Third District Judge Gordon Hall entered judgment against Mauss' in favor of Gochis in the amount of \$9,400.00, plus attorney's fees and court costs.

After the loan was given, but prior to the judgment being rendered, James Mauss died. His wife, Engleharde Mauss, never handled the loan monies and after the judgment was only left at her home. All life insurance and business assets went to satisfy the judgment of Plaintiff Southeastern Equipment.

For five years the Respondent Gochis did not receive any payments on his judgment. In late 1979, arrangements were made between the widow Mauss' counsel and the Respondent Gochis for the former to make monthly payments toward the judgment. Respondent Gochis supplied bank deposit slips to the Appellant to fulfill

...with a payment arrangement of \$20.00 effective January, 1980. Respondent has to increase payment amounts as able and has made such payments since January, 1980.

In January, 1983, Respondent Gochis noticed up a sale of real property on the Appellant's home in order to satisfy the judgment. Appellant Mauss subsequently filed a Motion to Enjoin Sheriff's Sale claiming their contract prevented such a remedy. The Motion was heard on January 24, 1983, before the Third Judicial District Court of Tooele. Judge Scott Daniels handed down a ruling which found no contract existed, and denied the Motion to Enjoin the Sheriff's Sale.

ARGUMENT

- I. THE RESPONDENT CONTRACTED WITH THE APPELLANT TO ACCEPT \$20.00 PER MONTH ON HIS OBLIGATION AND A CONTRACT WAS CREATED BETWEEN THE PARTIES

A contract is a legally enforceable agreement between two parties. Calamari & Perillo, Contracts §1-1(2d ed. 1977). In order for a contract to take effect the following elements must be satisfied:

- a) offer,
- b) acceptance, and
- c) consideration.

a) An offer is a promise to do, or refrain from doing, some specified thing in the future. *id.* In the present case, the respondent Gochis contacted the Appellant's counsel and agreed that

if the Appellant Mauss could begin monthly payments to satisfy his collection efforts and stop harassing the Respondent. The Respondent therefore, implying that he would not seek other remedies for executing the judgment. The Respondent expressed his desire to receive some type of payment on the judgment and thereby might refrain from seeking other legal remedies against the Appellant. she would begin monthly payments of \$20.00. The agreed amount could then be increased as the Appellant was able.

Here a valid offer is present. The Respondent has offered to accept monthly payments to satisfy the judgment and refrain from other legal remedies.

b) Acceptance or assent to an offer binds the parties to a contract. The offeror creates the power, through his offer, in the offeree to transform the offeror's promise into a contractual obligation. Here the Appellant agreed to the Respondent's offer to make monthly deposits in the Respondent's savings account. The Respondent recognized the acceptance by allowing the deposits to be processed and using the money to his benefit. The acceptance of the offer was communicated to the Respondent by letter and through the bank deposits. Therefore, valid acceptance occurred when Appellant Mauss began making monthly deposits.

c) Consideration is legal detriment that has been offered for and exchanged for a promise. Restatement (Second) of Contracts §71 (1981). Traditional consideration has been satisfied with

doctrine of promissory estoppel. The doctrine of reliance and estoppel may be substituted where consideration may not be found. 101 Cal.2d at §90 (1981). Although a pre-existing duty usually will not meet the consideration requirement, if reliance is established, the contract will be upheld and enforced despite the lack of consideration. Sugarhouse Finance Co. v. Anderson, 610 P.2d 1369 (1980).

In Sugarhouse Finance Co. v. Anderson, the Utah Supreme Court applied the promissory estoppel doctrine to substitute for consideration and upheld the contract. A judgment was in force against the Defendant to pay \$2,423.86 to the Plaintiff. Two years had lapsed without any payment by the Defendant. The Plaintiff sought action against the Defendant to execute the judgment. Subsequently, the Defendant met with the Plaintiff and an agreement was reached to satisfy the judgment. Later the Plaintiff attempted to deny the agreement and seek other remedies. The court disallowed the Plaintiff's denial and upheld the agreement. The court held that the Defendant had relied on the Plaintiff's promise and he had suffered legal detriment. The court, therefore, found it unjust to allow the Plaintiff to seek other remedies and disregard his promise. When a promisee relies on a promise, public policy may only be served by enforcing the promise.

The Appellant in the instant case has faithfully made monthly deposits to the Respondent for several years. She has been under

the assurance that the contract arrangement has taken on an obligation and has not sought further methods to satisfy its judgment. The Appellant has relied on the Respondent's promise has had the understanding that she would not be further harassed with threats of losing her home.

It would therefore be unjust to allow the Respondent to renege or avoid the contract and harass the Appellant by his executive efforts. She has already lost her husband and the business. Her livelihood is very minimal and the loss of her home would be devastating. Public policy would be best served in upholding the contract by imputing consideration through a reliance/estoppel theory.

II. THE CONTRACT BETWEEN THE PARTIES IS NOT BARRED BY THE STATUTE OF FRAUDS

The Utah Code Annotated 25-5-4 states as follows:

In the following case every agreement shall be void unless such agreement, or some notice or memorandum therefore is in writing, subscribed by the party to be charged herewith:

- 1) Every agreement by its terms that is not to be performed within one year from the making thereof.
- A) The letter of February, 1980, is evidence of a contract to meet the Statute of Frauds.

A Memorandum will satisfy the Statute of Frauds requirement to evidence a contract. In Guinand v. Walton, 22 Utah 2d 18 P.2d 467 (1969), the Supreme Court of Utah heard a case which

... the contract to recover commissions. The following defenses were raised: 1) no valid contract, 2) no consideration, and 3) violation of the Statute of Frauds. The Court examined a letter which didn't exactly describe or completely state the terms of the oral agreement. The Court ruled that the letter was sufficient to satisfy the Statute of Frauds requirement. The Court upheld the contract and allowed recovery of the commissions.

The Restatement (Second) on Contracts §131 (1981) further explains the requirements of the Statute of Frauds:

Unless additional requirements are prescribed by the particular statute, a contract within Statute of Frauds is enforceable if it is evidenced by any writing signed by or on behalf of the party to be charged, which

- a) reasonably identifies the subject matter,
- b) is sufficient to indicate that a contract with respect thereto has been made between the parties or offered by the signor to the other party, and
- c) states with reasonable certainty the essential terms of the unperformed promises in the contract.

As evident from the Restatement, a letter setting forth the agreement will satisfy the Statute of Frauds. The Appellant, through her counsel, wrote a letter to the Respondent which, although not precise, set forth: 1) the identity of the parties, 2) referred to the agreement between the parties, and 3) stated the essential terms of the contract. A memorandum is only evidence of a writing to meet Statute of Frauds requirements. It is not

subject to strict analysis concerning precise contractual language.

Generally, courts allow memorandum evidence to satisfy the Statute of Frauds requirement. Therefore, the letter will meet this requirement.

- B) Partial performance on an oral contract can, notwithstanding Statute of Frauds requirements, uphold a contract by a court of equity.

The doctrine of partial performance was employed to take a contract out of the Statute of Frauds in Price v. Lloyd, 317 U.S. 86, 86 P. 767 (1906). This doctrine provides an equitable result that otherwise would result in forfeiting oral contracts. Courts disfavor the forfeiture of contracts and will allow partial performance to prevent forfeiture. (See also Jensen v. Whites, 13 Utah 2d 193, 370 P.2d 765 (1963)).

The Appellant Mauss has made monthly payments since the agreement. She has put forth a good effort to meet the monthly deposits. Her partial performance should take the oral contract out of the Statute of Frauds. If the court deems the letter is sufficient as memorandum, the court should impose the partial performance doctrine.

The Appellant contends that by either the memorandum theory or partial performance that the Statute of Frauds requirement is satisfied. The contract between the Appellant and Respondent is therefore, not barred by the Statute of Frauds.

III. THE DOCTRINE OF PROMISSORY ESTOPPEL REQUIRES
THE APPELLANT TO NOT EXECUTE ON THE OBLIGATOR

Estoppel is a remedy to promote the ends of justice. In Glitsos v. Kadish, 4 Ariz. App. 134, 418 P.2d 129 (1966), the court applied an estoppel remedy to enforce the contract and prevent a denial of the contract. The Arizona Appellate Court based its decision on the following statement:

The remedy of estoppel has for its purpose the promotion of the ends of justice, and the doctrine is grounded on equity and good conscience. It is based on the grounds of public policy and good faith, and is interposed to prevent injury, fraud, injustice and inequitable consequences by denying to a person the right to repudiate his acts, admissions, or representations, when they have been relied on by persons to whom they were directed and whose conduct they were intended to and did influence.

31 C.J.S. Estoppel §63 (_____)

The Respondent Gochis has attempted to repudiate his acts and representations he has given to the Appellant Mauss. He seeks to deny the contract and take steps to pursue another remedy. The Appellant has performed to the best of her ability and should not be required to be subjected to further harrassment from the Respondent. The Respondent has unilaterally determined that the agreement has not met his expectations and has thereby attempted to deny it. Just because a party of a contract becomes dissatisfied with it is not a sufficient reason to deny a contract. The Respondent is responsible for his own actions and should be held to them.

The estoppel theory must be employed to prevent the Respondent from prevailing on the Appellant widow. If he made his choice and should not now be allowed to withdraw it, he now perceives to be a bad bargain. It would be unwise to allow parties to make agreements and then subsequently deny them. The Respondent should be estopped from executing on the judgment of derogation of the contract which he has entered into with the Appellant.

CONCLUSION

The arrangement between the Respondent and the Appellant is not a mere understanding but an agreement which is subject to contract law. Public policy should uphold the contract in order to prevent the harrassment of this Appellant widow. Her home should not be sacrificed at the will of the unhappy Respondent who entered into a contract he now dislikes. The Respondent should be estopped from seeking a sheriff's sale and the contract should be enforced.

Based on the foregoing reasons, the Appellant urges that you to reverse the decision of the Third Judicial District Court.

Respectfully submitted this 6th day of June, 1983.


HARRIE A. VERNON
Attorney for Defendant-Appellant

MAILING CERTIFICATE

I hereby certify that I mailed two true and correct copies of the foregoing Brief to Douglas E. White, Attorney for Respondent, 155 North Main, Suite 4-1, Tooele, Utah 84074, this 6th day of June, 1983.

Brian A. Hansen

IN SENATE
JANUARY 1983
REPORT OF THE
COMMISSIONERS OF THE
LAND OFFICE

STATE OF MICHIGAN, COUNTY OF WASHTENAW, DISTRICT
OF THE COURT OF COMMON PLEAS, CIVIL DIVISION

PLANNING AND HOUSING COMMISSION,)
a public corporation and)
MICHIGAN COASTAL, Incorporated,)
Plaintiffs,) COURT OF APPEALS TO ENJOIN
) SHERIFF'S SALE
v.)
)
PLANNING AND HOUSING COMMISSION)
and M/S/S/ Jim's Garage) Civil No. 8223
and Garage,)
Defendants.)

Defendant's motion to Enjoin Sheriff's Sale in the above-
captioned matter came on regularly for hearing before the
Honorable Scott J. Ford, Judge, on the 15th day of January, 1983,
at which time Plaintiff appeared in person and being represented by his
counsel, Leslie M. White, Esquire, and the Defendant appearing
in person and being represented by her counsel, Patricia A.

McCarthy, Esquire. The matter having been heard and the Court
having rendered its judgment, the Clerk of the Court has
caused a copy of the same to be filed with the Clerk of the Court.

The Court's judgment and the Clerk's return thereon did not enter
into effect until the 15th day of February, 1983, for the payment of the Judgment at
the rate of \$100.00 per month.

2. That the Plaintiff, vide [redacted] execute on to [redacted] which was [redacted] of May, 1975.

3. That the motion to Enjoin the Sheriff's Sale is dismissed.

4. That the Plaintiff, William [redacted], mailed the notice to the Defendant, Englishards [redacted], that he intends to execute on the Judgment and that the Sheriff's Sale, originally set for January 31, 1983 at the hour of 12:00 noon, will be continued for thirty (30) days.

DATED this 15th day of February, 1983.

BY THE COURT:

15/ Scott Daniels
JUDGE

I hereby certify that I mailed a true and correct copy of the foregoing Order on Motion to Enjoin Sheriff's Sale to Barrie A. Vernon, Attorney for Defendant, 179 South Main Street, Tooele, Utah 84073, postage prepaid, this 17th day of January 1983.

JUDY [redacted]
CLERK



DEPARTMENT OF THE ARMY

TOOELE ARMY DEPOT
TOOELE, UTAH 84074

Office of The Chief Counsel

8 February 1980

Mr. Bill Gochis
57 N. Pinchurst
Tooele, Utah 84074

Dear Bill:

I have given the bank deposit slips to Angel and she will make her payments directly to the bank. She has begun these payments of \$20 per month effective January, 1980.

These payments are made on the promissory note which she and Jimmy signed in October, 1974, copy attached. I assume that you still have the original.

In your 1974 suit, you alleged that Angel and Jim owed you \$9,400.00. Angel recalls, however, that you received a \$5,000.00 check in Ed Watson's office and \$1000 on October 11, see attached receipt. You also received two other \$5000 checks which were post-dated and not good. All three checks were to repay you the \$15,000 you loaned to Jim.

Taking the \$5,000 check which was good, the \$1000 cash (receipt) and the \$400 you acknowledge in your note, it is our position that Angel still owes you \$8,600.00. I figure that it will take, at the current rate, nearly twenty years to pay just the principal. Of course, Angel will increase her payments when she is able.

The original note did not call for interest and I do not know your position on this matter. Please advise what, if any, interest rate you intend to charge Angel.

Thanks for your patience.

Sincerely yours,

GARRIE A. VERIION