1964

Dairy Distributors, Inc. v. Locan Union 976 et al : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT
of the
STATE OF UTAH

DAIRY DISTRIBUTORS, INC.,
Plaintiff and Respondent,

vs.

LOCAL UNION 976, JOINT COUNCIL 67, WESTERN CONFERENCE OF TEAMSTERS, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO, MILO V. RASH, CLARENCE LOTT and JOSEPH W. BALLEW,
Defendants and Appellants.

Case No.
10160

RESPONDENT'S BRIEF

Appeal from the Judgment of the Third District
Court of Salt Lake County.
Honorable Aldon J. Anderson, Judge

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Case No. 10160

RESPONDENT'S BRIEF

STATEMENT OF CASE

This is a review of a nunc pro tunc Order made and entered by the Honorable Aldon J. Anderson, District Judge.

DISPOSITION IN THE LOWER COURT

The District Court entered a nunc pro tunc order requiring the Clerk to correct the record to reflect the terms of the judgment initially made in the case.

RELIEF SOUGHT ON APPEAL

Respondent seeks to have the ruling and action of the trial court affirmed.

STATEMENT OF FACTS

THE HISTORICAL DETAIL OF THE STATEMENT OF FACTS OF THE APPELLANT IS ESSENTIALLY CORRECT. THIS RECITATION HAS BEEN MADE EVERY TIME THIS COURT HAS BEEN REQUESTED TO PASS UPON ANY PHASE OF THIS LITIGATION.

The oft-repeated record cited by the Appellants in their Statement of Facts is but another affirmation by them that they have lost at every turn.

Specific attention is called to page 12 of the Appellant's Brief at which place they make a reference to what the trial court Judge in California decided.

There is no record upon this subject but the trial judge in California did not say that he would not grant a judgment for interest. He said if he applied California law he would certainly grant the interest. Utah law in this connection applies, and this the trial judge recognized.

He, therefore, continued the case until the matter of interest was clarified by the Utah trial judge, or this court, or by the citation of other Utah cases clearly defining the Utah law on this subject.

STATEMENT OF POINTS

POINT I.

THE JUDGMENT WAS NOT AMENDED BUT CONFORMED TO RECORD WHAT IN LEGAL FACT OCCURRED WHEN JUDGMENT WAS ENTERED UPON THE ORIGINAL VERDICT.

POINT II.

THE MATTER OF WHETHER INTEREST ATTACHES AT THE STATUTORY RATE TO A JUDGMENT UPON A VERDICT IS CONTROLLED BY UTAH LAW.

POINT III.

THE TRIAL COURT, UNDER UTAH RULES, AND LAW, HAS INHERENT POWER TO MAKE ITS RECORDS ACCURATE AND TO REFLECT WHAT LEGAL JUDGMENT WAS ENTERED UPON THE VERDICT.

POINT IV.

THE LOCAL LAW CONTROLS THE MATTER OF INTEREST ON JUDGMENTS RECOVERED IN STATE OR FEDERAL COURTS.

POINT V.

THERE IS NO WAY IN WHICH THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT COULD POSSIBLY AFFIRM OR OTHERWISE MODIFY THE DECISION OF THE UTAH SUPREME COURT IN THIS CASE.

ARGUMENT

POINT I.

THE JUDGMENT WAS NOT AMENDED BUT CONFORMED TO RECORD WHAT IN LEGAL FACT OCCURRED WHEN JUDGMENT WAS ENTERED UPON THE ORIGINAL VERDICT.

It is the position of the respondent that no

amendment to the judgment was made by the trial court. The action of the trial court was simply to conform the original document called a judgment to reflect the legal relationship which the judgment created.

The act of the trial judge complained of by the appellants was to reflect the interest which attached to the judgment as a matter of law.

POINT II.

THE MATTER OF WHETHER INTEREST ATTACHES AT THE STATUTORY RATE TO A JUDGMENT UPON A VERDICT IS CONTROLLED BY UTAH LAW.

The respondent relies upon Utah law for the attachment of interest to a judgment. The following are the rules of procedure and the statute upon which the respondent relies.

Rule 54(e) provides as follows:

> "Interest and costs to be included in the Judgment. The clerk must include in any judgment signed by him any interest on the verdict or decision from the time it was rendered, and the costs, if the same have been taxed or ascertained. The clerk must, within two days after the costs have been taxed or ascertained, in any case where not included in the judgment, insert the amount thereof in a blank left in the judgment for that purpose, and make a similar notation thereof in the Registrar of Actions and in the Judgment Docket.

It is the contention of the respondent further,

as will be developed in this brief, that Utah law applies. Hence, it is pertinent to observe in this connection that there is no Federal rule of similar import to Rule 54(e) of the Utah Rules of Civil Procedure.

There is a contention in the appellants' Brief that the Federal Rules of Civil Procedure are controlling in this instance and that the Utah Rules of Civil Procedure must have been an unnecessary exercise in futility and repetition. The respondent does not so lightly regard the Utah Rules of Civil Procedure.

The respondent further relies upon Rules 60(a) of the Utah Rules of Civil Procedure which provides as follows:

> "(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court *at any time* (emphasis ours) of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court."

The statute upon which the respondent relies with respect to the attachment of interest to a judgment is 15-1-4, Utah Code Annotated, which reads as follows:

> "Interest on Judgments. Any judgment

> rendered on a lawful contract shall conform thereto and shall bear the interest agreed upon by the parties which shall be specified in the judgment; other judgments shall bear interest at the rate of 8% per annum."

The consideration and the construction of these provisions of our Rules of Civil Procedure and our statute make it apparent that notwithstanding the failure of the Clerk to write in the figure 8% in the original judgment document, is not controlling and that these provisions of our rules and statutes are.

POINT III.

THE TRIAL COURT, UNDER UTAH RULES, AND LAW, HAS INHERENT POWER TO MAKE ITS RECORDS ACCURATE AND TO REFLECT WHAT LEGAL JUDGMENT WAS ENTERED UPON THE VERDICT.

This Court and others have frequently held that a trial judge has the inherent power to correct any record to make it reflect accurately what transpired in any legal proceeding before the trial judge.

Representative of these decisions are the following cases decided by this Court.

Kettner vs. Snow, 375 P.2d 28, 13 U.2d 382, 384.

The decision cited is the 1962 opinion of this Court. It came to this court as an original proceeding by the defendants in the trial court to prohibit the trial court from further proceeding with the matter.

It arose out of an action for recovery of dam-

ages for personal injuries and property. A jury returned a verdict of no cause of action. The plaintiffs in the trial court permitted the time to go by within which they might have served and filed a Motion for New Trial. Later they presented to the trial court an order permitting them to file a motion for new trial which was signed by the District Judge nunc pro tunc. A further order was also presented to the District Judge which he signed, permitting the expanding of time within which an affidavit in support of the Motion might be filed.

This Court held that under the circumstances existing in that case the trial judge did not have the authority to change the rules and to permit, by the filing of an order nunc pro tunc, the increase of time which the rules had limited.

The case is, however, cited for the expression of the general law in the opinion by Mr. Justice Crockett, which says as follows:

> "We are not unmindful of the fact that that in proper circumstances, where the interest of justice so require the court has power to act nunc pro tunc, that is, to do an act upon one date and make it effective as of a prior date. It is recognized that clerical errors may be corrected or omissions supplied so the record will accurately reflect that which in fact took place."

As already indicated, it is the position of the respondent that what Judge Anderson did in this case by reason of his order nunc pro tunc was simply

to correct the record so it accurately reflected that which in fact took place.

The second case which the respondent asserts in support of its position, is *Cook vs. Gardner*, 381 P.2d 78, 14 U.2d 193, 195. This action arose by reason of the suit of the plaintiff against the widow and the executrix of his business associate to compel transfer to him of certain shares of stock. The plaintiff prevailed and the defendant appealed. One of the points of attack upon the judgment made by the appellant was that the action below was at one time dismissed on the defendant's motion and the minute entry said that it was dismissed with prejudice.

Thereafter the trial judge entered an order saying that the action was dismissed without prejudice.

The appellant's contention was that the trial judge had improperly inserted the word "without" in its order in contravention of the previous minute order entry.

The opinion of this Court, also by Mr. Justice Crockett, said as follows:

> "The contention of the appellant is without merit. First because it is the prerogative of the court to correct any error or supply any deficiency in its records that may have occurred because of mistake or inadvertance."

These two cases are simply cited for the original principle that the trial court has the inherent

right to make its records conform with that which was legally done.

The respondent commends to the attention of the court the case of *Howard vs. Howard,* 298 P.2d 48, 49, 50, a 1956 case of the District Court of Appeals of the Second District, Division 1, of the State of California.

The case was an appeal by the defendant husband from an order denying the appellant's motion asking that the County Clerk be directed to enter a full satisfaction of an interlocutory judgment of divorce, with particular respect to an attorney's fee and costs. And further, that the Sheriff cease making attempts to collect interest on the judgment for attorney's fees.

There was no controversy with respect to the fees ordered to be paid to the wife's attorney, and the only question in the lawsuit involved the matter of whether interest was allowable upon the judgment.

In that case the respondent's position was that any judgment awarding money, automatically bore interest on the judgment at the rate of 7% (the rate in California), until paid, even though the form of judgment itself made no provision for interest thereon.

The trial court's language, which was quoted by the appellate court in this case, is as follows:

"It seems to me a simple elementary thing

where one party deprives another party of money which is rightfully theirs, pursuant to court order, it bears interest 7% from the date due. That it my holding."

The appellate court further quoted the trial court in this regard as follows:

"I am not concerned with the forms in any respect. Both of you have to some extent relied on what the forms contain or omit. I don't think that is the least bit material. The only question is, what is the law. Does the law provide for interest on attorney's fee or does it not? If the forms are inadequate they will have to be changed then, not the law."

The opinion of the appelate court contains the following language which the respondent feels is applicable in this case.

"Likewise, appellant's arguments that the form and wording of the writ of execution precludes allowance of interest or that its use by respondent constitutes a waiver of interest are without merit. As observed by the trial court, the allowance of interest on a money judgment is not dependent upon forms or phraseology but is automatically allowed by law."

It is precisely this doctrine upon which the respondent depends. Finally the respondent urges that a consideration of the Utah Rules of Civil Procedure and the statutes require the application of the language just cited.

POINT IV.

THE LOCAL LAW CONTROLS THE MATTER OF INTEREST ON JUDGMENTS RECOVERED IN STATE OR FEDERAL COURTS.

The original action was filed, tried and judgment rendered in the Third Judicial District Court in and for Salt Lake County, Utah. That State District Court was authorized to entertain jurisdiction by the Federal Congress under the provisions of Section 303(b), Labor Management Relations Act, 61 Stat. 158.

With respect to this authorization the Tenth Circuit Court in its opinion relating to a previous appeal in this case, reported as *Dairy Distributors, Inc. vs. Western Conference of Teamsters*, 294 F.2d 348 (10th Cir., Utah), stated:

> "The grant of jurisdiction to state courts to try and decide certain issues under the Labor Management Act carries with it the inherent power to interpret the act and to decide factual matters necessary for the proper and lawful administration of the act. The grant of such jurisdiction to State Courts and the similar grant to the United States District Court does not contemplate the dual remedy or a dry run in either court."

With the grant of jurisdiction to try such cases, the Federal Congress also left to the local state courts the procedures by which such cases would be tried and the nature of judgments which would reflect their determination. As heretofore observed, Utah law requires that judgments rendered shall bear

interest at the rate of 8% per annum. Section 15-1-4, U.C.A., 1953. The result in this respect could not have been different had the trial been conducted and judgment rendered in the Federal District Court of Utah, because Title 28, U.S.C.A., Sec. 1961 provides:

> "Interest shall be allowed on any money judgment in a civil case recovered in a District Court. Execution therefor may be levied by the marshall in any case where, by the law of the State in which such court is held, execution may be levied for interest on judgments recovered in the courts of the state. Such interest shall be calculated from the date of the entry of the judgment at the rate allowed by the State law. June 25, 1948, c 646, 62 Stat. 957."

The purpose of this statute and its predecessor, 28 U.S.C.A. Sec. 811, which was overlooked or ignored by appellant in its brief, as stated in the case of *Washington and G. R. Co. vs. Harmon*, (1893), 147 U.S. 571, was to bring about uniformity between the state courts and the federal courts sitting within the state upon the subject of interest. Without the statute a successful plaintiff, suing on a cause of action of which the state and federal courts had concurrent jurisdiction, would be deprived of interest on his judgment by proceeding in the federal court.

The Supreme Court in the case of *Massachusetts Benefit Association vs. Miles*, 137 U.S. 689 (1891), stated with respect to interest on judgments:

> "The courts of the states and the federal court sitting within the state should always be in harmony on this point. Both in Holden v. Trust Co., 100 U.S. 72, and in Ohio v. Frank, 103 U.S. 697, it was held that the question of interest is always one of local law."

Again, in the case of *Klaxon Co. vs. Stentor Co.*, 313 U.S. 487 (1941), Justice Reed speaking for the court determined that the allowance of interest on a judgment obtained in a Federal Court, or the method of determining it, was a procedural matter and not substantive, and that ". . . the proper function of the Delaware Federal Court is to ascertain what the state law is, not what it ought to be."

The application of 28 U.S.C.A. Section 1961 is mandatory. In *Blair v. Durham*, 139 F.2d 260 (6th Cir, 1943), judgment was entered for $6,500.00 and costs but was silent on the question of interest. The Circuit Court affirmed the Federal District Court and the mandate was also silent as to the provision of interest. On petition the Circuit Court ruled that the interest was applicable from the date of judgment until paid at the same rate provided in similar judgments in the Courts of Tennessee, the state in which the Court was sitting. The following is taken from the language of the opinion (page 261):

> "The court, in the present case, had no discretion in the matter of withholding or awarding interest. Therefore, the fact that the judgment of the trial court and the mandate of this court made no specific award of

interest, is immaterial. The allowance of the legal rate of interest under the laws of the State of Tennessee and for the period provided under 28 U.S.C.A. Sec. 811, was mandatory."

The Federal stature mentioned automatically implements the interest provisions of Section 15-1-4 U.C.A., 1953, on the judgment here involved. The appellant, however, contends that while a state court may be authorized to try and render judgments in controversy involving a Federal law, that it has no authority "to add to a judgment interest on the judgment rendered". (Appellants' Brief, p. 15). It is true that a state court or a federal court is without power to add "pre-judgment interest" as a part of the compensable damages. However, this has no reference to the interest required by statute to run on the judgment itself. The opinion in the case of *Moore-McCormack Lines v. Amirault*, 202 F.2d 893, 895, (1st Cir., 1953) is explicit on this point.

> "* * *[A] distinction must be made between (1) the running of interest upon a judgment debt from the date the judgment was entered to the date of payment, and (2) the allowance of pre-judgment interest to be included as an item of damages in the total amount of an ensuing money judgment, in order that the plaintiff may be more fully and justly compensated for the wrong complained of. The latter may be regarded as a part of the substance of the claims sued upon, for which a money judgment is sought.
>
> "28 N.S.C. Sec. 1961 belongs in category

(1) above. The provisions of Section 811 of the Act of August 23, 1942, 5 State. 518. The purpose was simply to provide that money judgments of federal courts should bear interest from the date of the entry of the judgment collectible in the same way and at the same rate as provided in the local state law for the allowance of interest on money judgments recovered in state courts. Interest upon the amount of a money judgment rendered by a federal court runs automatically, by the manadatory provision of 28 U.S.C. Sec. 1961, even though the judgment itself — as in the case at bar — contains no specific award of such interest. . . . But 28 U.S.C. Section 1961 has no bearing on the problem whether pre-judgment interest is allowable as an item of damages on a particular claim, to be included in the total amount of the money judgment."

The authorities cited by the appellant at page 15 of its Brief, refer to matters relating to pre-judgment interest, or similar situations and are not in point insofar as this case is concerned. They do not deal with judgments rendered as in the present case, nor do they involve a state statute requiring the application of interest upon the judgment.

In the recent case of *Woodmont, Inc. vs. Daniels*, 290 F.2d 186 (10th Cir., Utah 1961), the Tenth Circuit Court held that Sec. 15-1-4, U.C.A., 1953, required that interest be allowed on a judgment even though the prevailing party participated affirmatively on appeal. It further observed that where interest on a judgment is not specifically fixed in some other manner, the law of the state is control-

ling. The appellant admits that the Labor Management Relations Act (Taft-Hartley Act) is silent "as to whether or not a judgment such as here involved is to bear interest" (Appellant's Brief p. 17). Thus, by its own admission, and the application of the Federal statute and case law, the interest provision contained in Section 15-1-4, U.C.A. (1953), is effective in the present case, and the allowance of interest on the judgment at the statutory rate of 8% per annum is proper from the date of entry of said judgment.

POINT V.

THERE IS NO WAY IN WHICH THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT COULD POSSIBLY AFFIRM OR OTHERWISE MODIFY THE DECISION OF THE UTAH SUPREME COURT IN THIS CASE.

In support of Point V of the Brief, it is necessary to quote from the Appellants' Brief, particularly with reference to that material which appears on page 26.

> "It therefore follows that when the Supreme Court of Utah and *the Tenth Circuit Court of appeals affirmed the Judgment rendered by the Third District Court of Salt Lake County, Utah, the trial court was bound by the judgment so rendered and may not ignore the mandate or direction of the appellate courts.* (Emphasis added)

The contention of the appellant that the Tenth Circuit Court of Appeals affirmed the judgment of the Utah Supreme Court, or more particularly the Third District Court of Salt Lake County, Utah, is

not only difficult to understand, but impossible to support.

In support of the position of the respondent in this matter, all that need be done is to make reference to the appendix of the Appellant's Brief where it relates to the decision of the United States Court of Appeals for the Tenth Circuit.

It is necessary at this point to make reference to the proceeding in the United States District Court in Salt Lake City, in which it was attempted to enjoin the collection or enforcement of the judgment.

From the injunction ordered and entered by the United States District Judge, an appeal was taken to the United States Circuit Court for the Tenth Circuit.

Having reviewed the matter, the United States Circuit Court of the Tenth Circuit, reversed and remanded that decision of the United States District Judge. The final statement of the United States Circuit Court is as follows:

> "Reversed and remanded with directions to vacate the injunction."

The most cursory review of the decision of the Tenth Circuit Court could conclude with nothing but that the appellate court had in clear and direct language, told the United States Judge for the District of Utah, that he had made a mistake and they erased the decision he made to enjoin the enforcement of the judgment.

There is no conceivable way in which the judg-

ment of the United States Court of Appeals for the Tenth Circuit could be construed as having passed upon the rectitude of the decision of the Third District Court of Salt Lake County, State of Utah, or the Supreme Court of the State of Utah.

CONCLUSION

For the reasons delineated heretofore, it is respectfully suggested that this court should approve and affirm the order of Judge Aldon Anderson from which this appeal was taken.

Respectfully submitted,

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