1964

Dairy Distributors, Inc. v. Locan Union 976 et al : Appellants' Petition for Rehearing and Brief in Support Thereof

Utah Supreme Court

Clarence M. Beck; Elias Hansen; Attorneys for Petitioners;
Arthur A. Allen, Jr.; Rex Hansen; Attorneys for Respondents;

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. ~~10,169~~ 10160

APPELLANTS' PETITION FOR REHEARING AND BRIEF IN SUPPORT THEREOF

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

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Defendants and Appellants.

Case No. 10,169

PETITION FOR REHEARING

Come now the defendants and petitioners and petition this honorable court to grant them a rehearing for the reasons and upon the following grounds:

I

The court erred by in effect deciding that the judgment appealed from was based upon the laws and rules of Civil Procedure of Utah and not on the laws and rules of Civil Procedure of the United States.

II

The court erred in deciding that the authority of the courts to amend the judgment appealed from may be granted under Section A, whereas, under both the state and federal Rules of Civil Procedure an amendment may be granted only under Section B if sought within 90 days under state rules and one year under the federal rules of civil procedure.

III

The court erred in affirming an amendment to a judgment that was granted ex-parte without notice and without an opportunity to the petitioner to be heard, contrary to the Fourteenth Amendment of the Constitution of the United States and Section 7 of Article I of the Constitution of Utah.

IV

The court erred in its construction of the federal law contrary to the construction given to such federal

law by the federal courts including the Supreme Court of the United States of America.

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Clarence M. Beck

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Elias Hanson

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John J. Dunn

We, Clarence M. Beck and Elias Hanson, attorneys for petitioners, certify that the foregoing Petition is not filed for the purposes of delay and that we are of the opinion that there is merit to said Petition.

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,
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Case No. 10,169

BRIEF IN SUPPORT OF PETITION FOR A REHEARING

ARGUMENT

Notwithstanding there is no allegation in the Complaint filed in this case that it is brought under a federal law, in all the proceedings had in this cause it is made

to appear that the same was brought under a federal law, namely, the Taft-Hartley Act. That being so, it is a federal and not a state law that must be applied in fixing the nature and amount of the relief that may be granted.

POINT I

THE COURT ERRED BY IN EFFECT DECIDING THAT THE JUDGMENT APPEALED FROM WAS BASED UPON THE LAWS AND RULES OF CIVIL PROCEDURE OF UTAH AND NOT ON THE LAWS AND RULES OF CIVIL PROCEDURE OF THE UNITED STATES.

A number of Utah cases are cited in the opinion heretofore rendered by this court affirming the judgment appealed from. None of those cases involved a law brought under federal law and none dealt with judgments based upon the federal law. The authorities seem to be uniform in holding that the substantive law of the Government whose law is alleged to have been broken, must be given effect in whatever court relief is being sought. The law in such particular is thus stated in 15 CJS, Page 897:

> "It is thoroughly established as a general rule that the lex loci delicte of the law of the place where a tort or wrong has been committed is the law that governs and is to be applied with respect to the substative phases of torts or the

action therefor and determines the question of whether or not an act or omission gives rise to a right or action or civil liability for a tort; Numerous federal and state cases are there cited in support of the text under Notes 63 and 64. In this action the acts for which relief is sought occurred in New York City and is based upon an alleged unlawful boycott.

The case authorities are numerous to the effect that in the area of Taft-Hartley labor litigation, federal law displaces state law. In a recent United States Supreme Court unanimous decision, Teamsters Local 20 vs. Lester Morton, May 25, 1964, October Term, the court held:

> "In short, this is an area 'of judicial decision within which the policy of the law is so dominated by the sweep of federal statutes that legal relations which they affect must be deemed governed by federal law having its source in those statutes, rather than by local law.' Sola Electric Co. v. Jefferson Electric Co., 317 U.S. 173, 176. Accordingly, we hold that since state law has been displaced by Para 303 in private damage actions based on peaceful union secondary activities, the District Court in this case was without authority to award punitive damages."

POINT II

THE COURT ERRED IN DECIDING THAT THE AUTHORITY OF THE COURTS TO AMEND THE JUDGMENT APPEALED FROM MAY BE GRANTED UNDER SEC-

TION A, WHEREAS, UNDER BOTH THE STATE AND FEDERAL RULES OF CIVIL PROCEDURE AN AMENDMENT MAY BE GRANTED ONLY UNDER SECTION B IF SOUGHT WITHIN 90 DAYS UNDER STATE RULES AND ONE YEAR UNDER THE FEDERAL RULES OF CIVIL PROCEDURE.

The federal courts have decided that the jurisdiction of the courts to amend the judgment if not sought within the time provided for under the Rules of Civil Procedure, the court is without jurisdiction to make the amendment sought. The leading federal case so holding is Wallace vs. United States, 142 Fed. 2d 240.

POINT III

THE COURT ERRED IN AFFIRMING AN AMENDMENT TO A JUDGMENT THAT WAS GRANTED EX-PARTE WITHOUT NOTICE AND WITHOUT AN OPPORTUNITY TO THE PETITIONER TO BE HEARD, CONTRARY TO THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES AND SECTION 7 OF ARTICLE I OF THE CONSTITUTION OF UTAH.

It will be seen that under Rule 60, the kind of errors that may be corrected by the courts are those which are intentional, which are characterized as clerical errors, and those which are purposely but erroneously

done. The authorities seem to be uniform in holding that an error purposely committed may not be corrected after the time provided by Section B of Rule 60. Under Section A, additional time is granted to amend the clerical errors; that is, an error that was inadvertently committed. The distinction is discussed in Freeman on Judgments, 5th Edition, Vol. I, Page 30, Sec. 153, which is quoted on Page 19 of defendant's original brief. It thus may be a matter of controlling importance to determine whether the failure to provide for interest in the judgment appealed from was done inadventently or intentionally. Not only were the defendants denied their right to be heard and present evidence, but no evidence was offered or received by the lower court upon that matter.

IV

THE COURT ERRED IN ITS CONSTRUCTION OF THE FEDERAL LAW CONTRARY TO THE CONSTRUCTION GIVEN TO SUCH FEDERAL LAW BY THE FEDERAL COURTS INCLUDING THE SUPREME COURT OF THE UNITED STATES OF AMERICA.

It is the established law as decided by the federal courts that when an appeal is taken from a judgment which makes no provision for interest and the appellate court merely affirms the judgment without granting

to the lower court authority to add interest, then, and in such case, the lower court is without authority or jurisdiction to add interest. Such is the holding of the following cases: Home Indemnity Company of New York vs. O'Brien, 112 Fed 2d, 387; Albion Idaho Land Co. vs. Adams, 58 Fed Sup 579; Washington vs. G. R. Co., 140 US 91; Kansas City S.R. Co. vs. Guardian Trust Co., 281 US 1; Ex parte Union Steam Boat Co., 178 US 317. In this connection, the attention of the court is directed to provisions of the law passed by Congress, Title 28 U.S.C.A., Section 1961, passed on June 25, 1948. That Act grants to lower courts the authority to allow interest on judgments at the same rate that is allowed on judgments in the state where the action is brought. There is, however, no language in the Act which may be said to authorize the lower court to ignore the decisions above cited which hold that a lower court is without authority or jusidiction to amend a judgment which has been affirmed by an appellate court without the lower court being granted authority to do so. To permit that to be done would in effect vest in the lower court authority to reverse an appellate court.

By our failure to re-argue that the doctrine of res judicata precludes the courts from granting an amendment, we do not wish to be understood as waiving that question.

For the reasons stated, defendants and petitioners pray that a rehearing be granted.

Respectfully submitted,

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Clarence M. Beck

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Elias Hanson

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Clarence M. Beck