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Richard E. Lundstrom et al v. Radio Corporation of America et al : Brief of Respondent in Answer to Petition for Rehearing

Utah Supreme Court

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Kipp and Charlier; Attorneys for Defendant and Respondent;

In The

SUPREME COURT OF THE STATE OF UTAH

AND MRS. RICHARD E.
DSTROM, et al,

Plaintiffs and
Appellants

vs

DIO CORPORATION OF AMERICA
UTAH ELECTRONICS, INC.,

Defendants, and

NTINENTAL THRIFT & LOAN
PANY,

Defendant and
Respondent

Case No.
10174

ESPONDENT'S BRIEF IN ANSWER TO PETITION FOR REHEARING

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RADIO CORPORATION OF AMERICA and UTAH ELECTRONICS, INC.,	:	10174
Defendants, and	:	
CONTINENTAL THRIFT & LOAN COMPANY,	:	
Defendant and Respondent	:	

RESPONDENT'S BRIEF IN ANSWER TO PETITION FOR REHEARING

STATEMENT OF CASE

Inasmuch as this Court has previously fully considered and correctly ruled on the matters raised by the Appellants in Point I and III of their Brief in Support of

Petition for Rehearing, the Respondent deems it unnecessary to further reply thereto. These points involve nothing new, but include another attempt to go beyond the evidence, the record, and the issues before the trial court. The plaintiffs again endeavor to invade the province of the jury in deciding the issues of fact, resulting in a continuation of the tactics employed by them throughout these proceedings to invoke the sympathy of the Court on the basis of an interpretation of facts contrary to the jury's findings and this Court's announced position.

Respondent, however, feels it essential to inform the Court of its position relative to the Appellants' remaining contention.

ARGUMENT

Appellants renew their claim that an assignee stands in the shoes of his assignor. Point II, Appellants' Brief in Support of Petition for Rehearing. They rely on and cite as authority a 1963 Pennsylvania case, Norman, et ux, v.

World Wide Distributors, Inc., et al, 202 Pa. Super. 53, 195 A.2d 115. That the cited case is distinguishable from the instant action is readily apparent from a reading of that court's decision.

The plaintiffs there purchased a breakfront, executing a negotiable promissory note and an "Owner's Participation Certificate". The note was attached to the rear of the other documents, and was blank when signed. The plaintiffs were persuaded to execute the instruments without reading them. The face amount of the note was $1,079.40, or about five times the fair retail price of the breakfront. The note was sold to the defendant finance company for $831, or at a discount of $247.60.

The evidence further showed that the finance company was not only aware of many of the foregoing facts at the time it acquired the plaintiffs' note, but that it made no attempt to make certain that the plaintiffs knew or understood the nature of the transaction.

The Pennsylvania court said that one claiming to be a "holder in due course must have dealt fairly and honestly in acquiring the instrument in controversy," and that "where circumstances are such as to justify the conclusion that the failure to make inquiry arose from a suspicion that inquiry would disclose a vice or defect in the title, the person is not a holder in due course." Having failed to satisfy the "good faith" requirement of the Pennsylvania negotiable instrument law, the finance company was held subject to the same defenses available to the plaintiffs against the seller.

The situation now before this Court is different. The plaintiffs were advised and understood the significance of each document they signed. They read the conditional sale contract and were completely aware of its binding effect. They received their television set and antenna with proper warranties, had them installed and "set-up" and were provided with the protection of credit life, accident and health insurance; full value for the amount which they agreed to

pay. The Respondent, although never claiming to be a holder in due course, took great care to make certain that those plaintiffs whose contracts it purchased clearly understood their obligation. It fulfilled every duty owed by it to them.

Even more germane to the matter is the fact that the Respondent's inquiry disclosed, and the Court below found, no evidence of any fraud committed by any of the defendants, their agents or employees. The plaintiffs waived all other defenses and any possible right of set-off as against the assignees of the seller. Thus, even if the Respondent failed to make proper inquiry within the holding of the Pennsylvania court, and if such holding could be controlling in the case of a non-negotiable instrument, there is here no defense available to the plaintiffs which would permit a court of equity to apply the doctrine of set-off as petitioned by the plaintiffs.

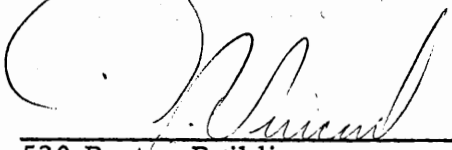
CONCLUSION

Plaintiffs' Brief contains no relevant precedent or

presentation worthy of rehearing. Their Petition should be denied.

Respectfully Submitted

KIPP and CHARLIER and
CRAIG T. VINCENT



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