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Utah Finance Company of Salt Lake v. Thomas G. Patrick and Mona Rae Patrick : Brief of Respondents

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

UTAH FINANCE COMPANY OF SALT LAKE,
Plaintiff and Appellant,

vs.

THOMAS G. PATRICK and MONA RAE PATRICK,
Defendants and Respondents.

No. 10179

BRIEF OF RESPONDENTS

Appeal from the Judgment of the Third District Court for Salt Lake County Honorable A. H. Ellett, Judge

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IN THE SUPREME COURT OF THE STATE OF UTAH

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BRIEF OF RESPONDENTS

The statement of the nature of the case and disposition in lower court are adequate as stated in appellant's brief.

RELIEF SOUGHT ON APPEAL

Defendant seeks sustainment on the lower court's judgment granting the motion to dismiss as to defendant, THOMAS G. PATRICK.

STATEMENT OF FACTS

The statement of facts is adequate as stated in appellant's brief.

ARGUMENT

Point I

T HE TRIAL COURT PROPERLY GRANTED DEFENDANT'S MOTION TO DISMISS FOR THE REASON THAT PLAINTIFF COLLECTED A FEE FROM DEFENDANT SO THAT AN INDEPENDENT CREDIT INVESTIGATION COULD BE MADE.

Section 7-8-3, Utah Code Annotated, 1953, reads in part as follows:

> "Every industrial loan corporation shall have power."

Nowhere in the above statute is it provided that a loan company is required by law to charge an investigation fee. The statute is on the basis of placing limits rather than requiring a charge as against the borrower.

If a charge of two per cent (2%) or $20.00, whichever is smaller, is collected for a credit investigation of a prospective borrower, then the plaintiff must rely on its investigation and not upon the statements of the borrower. The plaintiff is given a choice of collecting additional sums of money or relying upon borrower's statements.

Further, the statute provides that plaintiff may charge "for expenses incurred by it in examining and investigating the character and circumstances of the borrower." The statute does not allow plaintiff to charge two per cent (2%) or $20.00 simply because the plaintiff makes a loan. The charges are to be only those charges "incurred" by plaintiff, which by definition means some accounting is necessary by the plaintiff to the borrower.

It should be noted that the financial statement submitted by defendant to plaintiff was one of several in the rewriting of his chattel mortgage and note. On each instance he was charged an investigation fee of two per cent (2%). On the particular note sued upon, no investigation was made as to the security on the chattel mortgage.

Plaintiff did not know whether there had been any actual costs for investigation, or, in fact, whether an investigation had been made. The $19.04 charge was made only to give plaintiff additional income in consideration for making the loan.

It is not reasonable for plaintiff to charge defendant $19.04 for an investigation which is not going to be made. Likewise, a charge collected from defendant so that plaintiff may make an independent investigation should place the burden upon plaintiff, as if he was relying upon defendant's statements, it would not be necessary for plaintiff to charge defendant a fee for an investigation.

Plaintiff is contending on the one hand that if a borrower falsifies his financial statement, this will be fraud, but on the other hand since he cannot believe what the borrower is saying on his financial statement, he will charge the borrower for an independent investigation to verify same. Plaintiff takes a dual and contradictory position of relying on the statements if they turn out to be false, and not relying on the statement and collecting money for an independent investigation to prove the statements are correct.

The rule is similarly stated in 37 Corpus Juris Secundum, "Fraud", Section 37-(a), Pages 284 and 285, as follows:

> " . . . one cannot secure redress for fraud where he acted in reliance on his own knowledge or judgment based on an independent investigation. This rule is especially applicable where the representee's investigation was undertaken at the suggestion of the representor. If it is established that the representee relied on his own judgment and not on representor's statements, he cannot recover, even though he was genuinely deceived by the representations, and his investigation was of an incomplete or ineffectual character."
>
> "There is authority holding that, even though no investigation was actually made, the fact that one was agreed on, will preclude the right to rely on representations." See also *Parker v. Brainard,* 91 Wash. 428, 157 P. 1078.

It will be observed that the authorities relied upon by the plaintiff are not directly in point with the issue.

Defendant likewise can find no authorities which specifically rule upon the issue in question.

Defendant did not of his own choosing pay plaintiff $19.04 for an investigation. This was demanded by plaintiff in consideration for making the loan. If plaintiff was relying on defendant's statements, then why was defendant charged $19.04 for an independent investigation? The answer can only be that plaintiff was not in fact relying upon the financial statement.

Plaintiff argues that to allow the dismissal would place a premium on fraud, that a borower by paying a maximum of $20.00 would be an immunity from his fraudulent acts. The simple answer to this is for plaintiff not to charge the borrower for an investigation and to rely upon the financial statement, or, in the alternative, to pay for its own investigation.

Defendant should not be required to pay plaintiff for an independent credit investigation unless in fact plaintiff is held to rely on said investigation.

CONCLUSION

It is respectfully submitted that the trial court correctly granted the motion of the defendant, THOMAS G. PATRICK, for summary judgment.

Respectfully submitted,

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Attorney for Defendant and Respondent