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Thorp Finance Corp. v. F. M. Wright and Alice J. Wright : Appellants' Reply Brief

Utah Supreme Court

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IN THE SUPREME COURT
of the
STATE OF UTAH

No. 10185

THORP FINANCE CORPORATION,
A Wisconsin Corporation
Plaintiff-Respondent

vs.

F. M. WRIGHT and ALICE J. WRIGHT,
husband and wife,
Defendants-Appellants

APPELLANTS' REPLY BRIEF

Appeal from the Judgment of the
Seventh District Court for Grand County
Hon. F. W. Keller, Judge

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TABLE OF CONTENTS

INDEX OF AUTHORITIES

CASES CITED:

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ARGUMENT

POINT I

The Respondent's argument seems to be based entirely upon the proposition that a house trailer is not a motor vehicle and therefore non-resident dealers in house trailers do not have to be licensed nor do they have to post a bond, nor do they have to register their vehicles when brought into the State for sale.

Respondent refers to 41-3-7, Utah Code Annotated, 1953, which reads as follows:

> "Definitions-Motor vehicle dealers-administrator,- appointment-supervision by state tax commission. The following words and phrases, when used in this act, shall for the purpose of this act, have the meaning respectively ascribed as follows, to-wit:
>
> (a) Motor Vehicle. Every vehicle intended primarily for use and operation on the public highways which is self-propelled; and every vehicle intended PRIMARILY for operation on the public highways which is not driven or propelled by its own power, but which is designated either to be attached to and become a part of, or to be drawn by a self-propelled vehicle; but not including farm tractors and other machines and tools used in the production, harvesting, and care of farm products . . ."

The Respondent appears to rely principally on the Utah Supreme Court opinion handed down in Pacific Intermountain Express Co. v. State Tax Commission, 8 Utah 2d, 144, 329 P2d 650 in support of its argument.

The Pacific Intermountain Express Co. Company case is a sales tax case where the usual cannons of statutory construction do not apply. The Court in the Pacific Intermountain Express Co. v. State Tax Commission stated: "Taxing statutes are to be construed strictly in favor of the taxpayer when doubtful." The Pacific Intermountain Express Company case is authority for the single proposition that trailers and semi-trailers transferred on isolated or occasional sale by a non-retailer are not taxable under the Utah Sales Tax Act. This case is not authority for the proposition that non-resident dealers in house trailers are immune to the regulatory and enforcing provisions of Utah laws.

Respondent's arguments are made without reference to the time tested cannons of statutory construction set forth by the Utah Supreme Court and outlined in Appellant's Brief. Respondent in its argument conveniently omits any reference to the purpose of the Utah laws relating to licensing and bonding dealers, and registration provisions and the mischief sought to be eliminated thereby. Respondent's technical argument that the house trailers in question are not "motor vehicles" because they were not "intended primarily" for use upon the highways omits any reference to Mr. Dannenbaum's "intention" and refers only to the use made of the trailers by the Appellants. In order to put this matter into proper prospective we must examine the use made of the trailers by Mr. Dannenbaum to determine whether the trailers were "primarily" intended for use upon the Utah highways by him.

Mr. Dannenbaum, doing business as "Dannenbaum Trailers, 101 Acoma, Grants, New Mexico" (as stated on

each of the contracts in question) pulled all seven of these trailers over Utah highways to Moab, Utah, and there sold two of the trailers to Mr. Wright on October 24, 1961, and sold five of them to Mr. and Mrs. Wright on December 14, 1961. In each instance, after the sale, he moved them again over the highways of this state to Mr. and Mrs. Wrights' lot. In the contracts, selected and provided by Mr. Dannenbaum and executed by him as Vendor and the Wrights as Vendees, the trailers are referred to as "motor vehicles" and the parties declared it to be their intention that "all matters relating to the execution, interpretation, validity and performance" were to be governed by Utah law. Notwithstanding his declared intentions he saw fit to completely disregard the Utah laws designed for the protection of the Utah public.

Applying the definitions of "primary" and the "primary purpose" provided by the Respondent and adopting the "cardinal rule" of statutory construction that the words to be construed must be given their usual and ordinary meaning and accepting the word "primary" as interpreted by the Respondent in its brief as meaning: "first, principal, chief, leading" and adopting the Respondent's definition of "primary purpose" as meaning, "that which is first in intention" and applying these definitions to the facts of this case it is clear to the most casual observer that Mr. Dannenbaum's use of the trailers was PRIMARILY for operation on the public highways of this state so that he could sell them in Utah for a profit. The fact that he ignored the licensing, bonding and registration provisions of the Utah law in seeking this profit only served to place him in a better competitive position than local dealers

selling the same items, who are required to license their salesmen and post bonds and comply with the registration provisions of the Utah law. Respondent now asks the aid of the courts of this state to enforce the penalty provisions of its illegal contracts which the Utah laws expressly deny to him and his assigns. (41-3-3, Utah Code Annotated, 1953.)

The real issue in this case is not whether a house trailer is a motor vehicle but rather whether the Court will allow a non-resident dealer in house trailers to bring his trailers into this state from a foreign state for the primary purpose of selling them here without complying with the regulatory provisions of this state and whether having done so Respondent will be allowed to maintain an action in this state without first disaffirming the legal contracts.

Reference is again made to the case of NEAL v. UTAH WHOLESALE GROCERY, Supreme Court of Utah, 210 P. 201, 61 Utah 22, which case recognizes the desire of the courts to avoid harsh results of denying access to the courts to persons who fail to comply with the regulatory provisions of this state.

The Utah Supreme Court stated as follows: "(4) The contract in question here, in our judgment, was an illegal contract, and not enforceable. The right of recovery necessarily must bring into consideration this illegal contract. Courts will not enforce such contracts." In Pullman's Car Co. v. Transportation Co., 171 U. S. at page 151, 18 Sup. Ct. at page 813 (L. Ed. 108) the court says: "They (the

courts) are substantially unanimous in expressing the view that in no way and through no channels, directly or indirectly, will the courts allow an action to be maintained for the recovery of property delivered under an illegal contract where, in order to maintain such recovery it is necessary to have recourse to that contract. The right of recovery must rest upon a disaffirmance of the contract and is permitted only because of the desire of courts to do justice as far as possible to the party who has made payment or delivered property under a void agreement, and which injustice he ought to recover. But courts will not in such endeavor permit any recovery which will weaken the rule founded upon the principles of public policy already noticed."

In this case the Plaintiff has not rested its case upon a disaffirmance of the contract so as to allow the courts to do justice as far as possible, but on the contrary seeks to invoke the penalty provisions of its contracts and retain the profits it has made under circumstances which make its competitive position better than those of Utah dealers similarly situated, contrary to the laws of this state and the provisions of Article XII, Section 6 of the Utah Constitution.

CONCLUSION

The Respondent, Thorp Finance Corporation, as Assignee, with full recourse from George Dannenbaum, should not be allowed an action, or right of action, to recover any trailer or part of the selling price thereof because the dealer George Dannenbaum failed to comply with the terms and conditions of the Utah law designed for the protection of the Utah public. If this court should decide that non-resident dealers in house trailers do not need to comply with the Utah laws when doing business in the state it will encourage unscrupulous dealers to bring their products into this state for sale on conditions that are better than those afforded to Utah dealers, and without fear that their illegal acts will be censured.

The Thorp Finance Corporation, under the full recourse provisions of its agreement, should be required to seek its redress from Mr. Dannenbaum who has been conspicuous throughout this case by his absence. If Mr. Dannenbaum feels some grievance he should be required to submit himself to the jurisdiction of the courts here to redress any legitimate claim he may wish to assert.