

1964

## Beehive Security Co. v. Fred G. Bush : Brief of Respondent

Utah Supreme Court

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# IN THE SUPREME COURT OF THE STATE OF UTAH

FILED

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BEEHIVE SECURITY COM-  
PANY, a Utah Corporation,

*Plaintiff-Appellant,*

vs.

FRED G. BUSH, a-k-a GILES  
F. BUSH,

*Defendant-Respondent.*

Clerk, Supreme Court, Utah.

Case No.  
10221

## BRIEF OF RESPONDENT

Appeal from Judgment of the Third Judicial District Court  
in and for Salt Lake County,  
Honorable Stewart M. Hanson, Judge

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# IN THE SUPREME COURT OF THE STATE OF UTAH

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vs.

FRED G. BUSH, a-k-a GILES  
F. BUSH,  
*Defendant-Respondent.*

} Case No.  
10221

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## BRIEF OF RESPONDENT

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### STATEMENT OF THE KIND OF CASE

This is an action brought in two Causes of Action to recover on two promissory notes and to foreclose a chattel mortgage allegedly given to secure the first promissory note.

### DISPOSITION IN LOWER COURT

The pretrial judge dismissed plaintiff's Second Cause of Action with prejudice and the trial court

entered a judgment of No Cause of Action on plaintiff's First Cause of Action.

## RELIEF SOUGHT ON APPEAL

Plaintiff seeks a new trial as to the First Cause of Action and defendant seeks to sustain the trial court's judgment of No Cause of Action.

## STATEMENT OF FACTS

Plaintiff's Statement of Facts are correct as far as they go. However, there are some additional facts which the Court should take into consideration. The plaintiff in his statement of facts asserts that the check for One Thousand Dollars (\$1,000.00), Exhibit P-11, was in payment for moneys advanced for the execution of the note and mortgage, Exhibits P-8 and P-9. This check, however, was in fact never delivered to the defendant nor was it made out to him. The check was an interoffice check made payable to Beehive Security and credited to the loan which was the subject matter of plaintiff's Second Cause of Action which was dismissed with prejudice by the pretrial judge (R. 7-8).

The defendant in addition to contending that P-8, P-9, and P-10 were forgeries or that the signatures of the defendant were obtained through fraud and trick also contended that he received no consideration for said note and mortgage (R. 6 and R. 8).

The defendant categorically denied ever having the check, Exhibit P-10, (R. 101). Defendant also stated that he did not cash the check (R. 34 and R. 101). Defendant stated he did not receive the proceeds from the check (R. 34 and R. 101). Further, defendant stated he did not authorize anyone else to cash such check for him (R. 101). Defendant further denied ever having any interest in a 1954 dump truck which was the subject matter of the chattel mortgage P-9 and further categorically denied that he had ever at any time read or seen the two documents, Exhibits P-8 and P-9, filled in prior to the time that he was in court (R. 102). Defendant further denied ever having made application to the plaintiff for a loan in the gross amount of Two Thousand Three Hundred Forty Dollars \$2,340.00) (R. 103).

The defendant further related circumstances whereby Mr. Young, the manager of the plaintiff, had taken documents in blank from the defendant pertaining to a transaction involving real property in Idaho (R. 102-103).

The trial court made three findings as follows:

1. That defendant did not sign the note or mortgage dated the 29th day of November, 1960.
2. That defendant received no consideration for said note and mortgage involved in plaintiff's First Cause of Action.
3. That defendant did not sign said note and mortgage on the 29th day of November, 1960,

with said note completed nor did he give the plaintiff or anybody else authority to fill in said note and mortgage. (R. 12).

The trial court concluded from these findings of fact that the defendant was entitled to a judgment of No Cause of Action.

## ARGUMENT

### Point I

#### THE EVIDENCE SUPPORTS THE FINDINGS OF THE TRIAL COURT.

The trial court made three findings of fact. It is submitted that the evidence supports each one of these findings of fact and it is submitted that if any one of said findings are sustained by substantial supporting evidence that the conclusion of the trial court that defendant was entitled to a judgment of No Cause of Action was correct.

Plaintiff correctly sets forth in his brief the law which should govern the decision on appeal. This rule, we submit, is that there must be a complete absence of any substantial supporting evidence supporting a vital point in the case.

With regard to the First finding "That defendant did not sign the note of mortgage dated the 29th day of November, 1960," it must be admitted that the defendant throughout the record expressed doubt as to whether or not the signatures on Exhibits P-8, P-9

and P-10 were his signature. The defendant did, however, state "I never sign my name, 'G. Fred Bush'." (R. 32). Further, while the expert witness called by the plaintiff was not cross examined as to the possibility that Exhibits P-8 and P-9 were traced signatures, it is submitted that an examination of these signatures reveal that the signatures have been traced from the same source or from each other and thus support the finding of the trial court that the defendant did not sign the note or mortgage. Particularly the letter "F" in "Fred", the letters "ed" in "Fred" and the letters "ush" in "Bush" are so identical as to preclude any other possibility than that the same were traced.

It is submitted that because of the exact nature of the writing on the two documents when compared with the defendant's own admitted signature that the defendant himself was uncertain at the time of trial as to whether or not he had signed said documents.

The Second finding of the trial court "That defendant received no consideration for said note and mortgage involved in plaintiff's First Cause of Action," is, we submit, amply supported by the record. The defendant was interrogated by plaintiff's counsel and the following questions and answers were asked and given:

Q. Isn't it true, Mr. Bush, that you cashed this instrument, payable to the order of G. Fred Bush, yourself, in the amount of \$1,003.83, you cashed this at First Security Bank of Utah on or about December 1, 1960?

A. That I will definitely answer no.

Q. What happened to the proceeds of the \$1,003.83?

A. That I couldn't answer it. I never received it.

Q. Then how do you know that it wasn't cashed by yourself at First Security Bank if you can't recall anything about the check, the signature, or anything else? How do you recall you didn't go over to First Security Bank and cash it?

A. I never received this check, to the best of my knowledge, at any time from Beehive Security.

Q. So that you didn't put your signature on the reverse side of the check, Exhibit P-10?

A. To the best of my knowledge I did not sign this check although the signature looks like the same as the other two documents. (R. 34 and R. 35).

Again the defendant was called and interrogated on direct examination concerning the consideration given for the note and mortgage and the following questions and answers were given:

Q. (By Mr. Taylor) I will show you what has been marked as 'Exhibit P-10.' Now, I will ask you if you cashed that check with the bank or at any other place?

A. Not to my recollection. Never had the check.

Q. Did you ever receive \$1,003.83 from the proceeds of that check?

A. No.

Q. Did you authorize anybody else to cash it for you and take the proceeds?

A. No, not to my knowledge, has not been anything there. (R. 101-102).

Thus the finding of the trial court that the defendant received no consideration for said note and mortgage which was one of the specific issues involved is supported by substantial evidence.

The only conflicting evidence is the testimony of the expert witness, Mr. Goddard, that Mr. Bush's signature appears on the check and the inference is drawn therefrom that Mr. Bush received the money. However, a careful examination of the record reveals that at no time did the former manager of plaintiff, Mr. Young, testify that he had given the check to Mr. Bush.

The Third finding of the trial court is also supported by substantial evidence. The court found "That defendant did not sign said note and mortgage on the 29th day of November, 1960, with said note completed nor did he give the plaintiff or anybody else authority to fill in said note and mortgage."

The defendant's testimony with regard to the note and the mortgage, Exhibits P-8 and P-9, was elicited on direct examination as follows:

Q. Now, with regard to Exhibits P-8 and P-9, a note and chattel mortgage on the dump truck, did you ever, at any time knowingly read that

document prior to the time you were in court?  
Did you ever read the document?

A. No.

Q. Did you ever see those two documents filled in?

A. Absolutely not. (R. 102).

It will be noted that the defendant's testimony is absolute that he did not at any time see the note and the mortgage with said note completed.

The defendant then continued to testify concerning the conversation he had with Mr. Young with regard to some blank documents he had signed in connection with the transaction involving the Idaho real property indicating that he had signed some documents at that time in blank (R. 102-103). Thereafter, he was asked concerning the application for a loan in the amount of the note which is the subject matter of plaintiff's First Cause of Action. Said testimony was as follows:

Q. Now, did you ever make application to Mr. Young or anybody else at Beehive for a loan in the sum or the gross amount of about \$2,300.00?

THE COURT: \$2,340.00.

Q. (By Mr. Taylor) \$2,340.00.

A. No, not to my knowledge at all.

It is submitted therefore that in view of this testimony that it cannot be held that there is a complete absence of substantial supporting evidence that the defendant did not sign said note with the note completed.

Much of the record concerns itself with the internal affairs of the plaintiff and establishes without a doubt that someone employed by the plaintiff corporation was making fictitious loans and apparently making fictitious payments on such fictitious loans by making book entries. This was apparently done in an attempt to have the loans thus made appear to be current. All of this evidence, we believe, supports the trial court's findings that defendant did not sign the note with said note completed and that he received no consideration.

## CONCLUSION

In conclusion, it is submitted that this Honorable Court should sustain the judgment of the trial court, it appearing that there is substantial evidence to support the findings of the court below.

Respectfully submitted,

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