

1965

Golden Spike Equipment Co., A Utah Corporation v. Howard F. Croshaw : Appellant's Brief

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IN THE SUPREME COURT OF THE STATE OF UTAH

GOLDEN SPIKE EQUIPMENT CO.,
A Utah Corporation

Plaintiff-Respondent

vs.

HOWARD F. CROSHAW,

Defendant-Appellant.

No. 10266

APPELLANT'S BRIEF

STATEMENT OF CASE

This is an action for the balance due on a conditional sales contract with a prayer for an order that the conditionally purchased property be sold and that Plaintiff be given a judgment for the deficiency, if any.

DISPOSITION IN LOWER COURT

The Defendant's motion for Summary Judgment was denied and the case was tried before a jury who returned a verdict in favor of the Plaintiff. The Court entered judgment in favor of the Plaintiff in the amount of \$941.54, plus interest at ten per cent from November 1, 1963, for \$155.25 attorneys fees and costs.

RELIEF SOUGHT ON APPEAL

The defendant seeks a reversal of the judgment and a judgment granting defendant's motion for summary judgment dismissing the Plaintiff's complaint.

STATEMENT OF FACTS

On July 30, 1963, Plaintiff, Golden Spike Equipment Company, sold Defendant, Howard F. Croshaw, a used 1957 Combine on a conditional sales contract which provided for a cash price of \$2500, a time price differential of \$124.61, the balance to be paid in two installments, the first installment of \$941.54 being due November 1, 1963, and the balance of \$983.07 being due November 1, 1964. The Defendant did not pay the installment due November 1, 1963.

Defendant claimed the combine would not work, that the parties mutually cancelled the contract and the combine was returned to the Plaintiff prior to the commencement of this action. On May 20, 1964, Plaintiff filed a complaint declaring the entire balance of the contract due and payable in the amount of \$1924.61 together with interest, attorney's fees and costs and asked that the combine be sold and Plaintiff be given a judgment for the deficiency if any. The Summons was served on the Defendant on June 15, 1964.

A few days after June 15, 1964, Defendant visited plaintiff and plaintiff offered to settle the matter if defendant would purchase another combine for \$500.00 and would pay plaintiff's attorney's fees in the amount of \$300.00. Defendant believing the attorney's fees were

excessive under the circumstances chose to answer the complaint and filed a counterclaim for damages for breach of warranty.

Defendant moved for a Summary Judgment to dismiss Plaintiff's complaint on the grounds that the contract was not enforceable under Section 15-1-2a, Utah Code Annotated, 1953. The Court denied Defendant's motion and the case was tried before a jury who returned a verdict for the Plaintiff.

STATEMENT OF POINTS

The Court erred in denying defendant's motion for Summary Judgment dismissing Plaintiff's complaint as the filing of a complaint declaring the entire amount of a conditional sales contract due and payable before maturity violates the buyer's right under Section 15-1-2a(B) (4), Utah Code Annotated, 1953, to pay the full indebtedness of the contract at any time prior to final maturity.

ARGUMENT

THE FILING OF A COMPLAINT DECLARING THE ENTIRE AMOUNT OF A CONDITIONAL SALES CONTRACT DUE AND PAYABLE BEFORE MATURITY VIOLATES THE BUYER'S RIGHT UNDER SECTION 15-1-2a (B) (4) UTAH CODE ANNOTATED, 1953, TO PAY THE FULL INDEBTEDNESS OF THE CONTRACT AT ANY TIME PRIOR TO FINAL MATURITY.

This appears to be a case of novel impression. Defendant has been unable to find a statute similar to **Sec-**

tion 15-1-2a, Utah Code Annotated, 1953, and therefore cases from other jurisdictions are inapplicable here. The Utah Supreme Court in *Dusenberry v. Taylor*, 7 Utah 2d 383, 325 P2d 910 considered the second paragraph of subdivision (B) (5) of Section 15-1-2a and said "that the provision next last quoted seems almost absurd" but held that the literal reading of the statute was "understandable and clear" and even though "there appears on the surface no good reason for enacting such legislation" the Court said "We cannot say it is void because the legislature used language leading to almost senseless results." Since the Supreme Court of Utah has indicated the language of the statute is clear, no citation to cases interpreting similar language appear appropriate. 50 Am. Jur., Statutes, Section 225-227, p. 204-212. 82 C. J. S., Statutes Sec. 322 (2), p. 577 et. seq. In *Re Stevens Estate*, 107 Utah 255 at 259, 130 P2d 85 where the Court said:

"The language of the statute is plain and its meaning is clear, in which case there is no occasion to search for its meaning beyond the statute itself."

The pertinent part of the statute provides:

"(4) Any provision in any conditional sale contract for the sale of personal property to the contrary notwithstanding, the buyer may satisfy in full the indebtedness evidenced by such contract at any time before the final maturity thereof."

"(5) If the seller . . . shall violate any provision of subdivisions (3) or (4) of this subsection the conditional contract shall not be enforceable."

Defendant submits that when upon filing its complaint on May 20, 1964, Plaintiff declared the entire balance of the contract due and payable over five months prior to the final maturity date (see paragraphs 5 and 8 of Plaintiff's complaint) and brought suit for this amount plus attorney's fees and interest it was a violation of subdivision (4) above quoted and therefore the contract is not enforceable as provided in subdivision (5). There are only two actions the Seller can take to violate the quoted provision of subdivision (4) and suffer the penalty set forth in subdivision (5). One is by refusing to accept an advance payment by the buyer and the other is to demand the entire unpaid balance before maturity as Plaintiff did in this instance. (Accidental or bona fide errors in computation are not subject to the penalty).

Not only is defendant's interpretation required by the plain language of the statute, but such interpretation is also reasonable and not absurd as is the portion of the statute discussed in *Dusenberry v. Taylor*, supra. In the first place the entire statute is written favorably to the seller. The seller may omit to do nearly every one of the mandatory items required by the statute for the protection of the buyer and yet the legislature says the contract is still enforceable (see second paragraph of subdivision B(5) and *Dusenberry v. Taylor*, supra). The conditional seller is not a small loan company which requires high interest rates to stay in business, still the seller is permitted to charge one per cent time price differential on the unpaid balance for each month the contract price is unpaid which permits an interest rate of twenty-five per cent or higher. This is, as the Court says in the case of *Dusenberry v.*

Taylor, supra., “one of the highest (interest rates) found in our statutes.” The Seller may also sue for delinquent installments and recover collection costs, attorney’s fees and interest on such delinquent installments. Since nearly everything in the Statute is for the benefit of the seller, and since in subsection A(8) the legislature indicates the statute was written for the benefit of the buyer, it seems some provision in the statute should be for the buyer’s benefit. Especially since the title of the statute says it is to provide “for the maximum rates to be charged” which from the buyer’s point of view includes not only the interest rate, but collection costs and attorney’s fees as well.

Defendant submits that the provision the legislature included for the benefit of the buyer is that the seller may not exercise an accelerated maturity clause in conditional sales contracts as the Plaintiff did in this case. In other words, the Seller can only bring suit for delinquent installments, and consequently cannot bring suit for the entire purchase price until after the final maturity date of the contract on conditional sales contracts under \$7500 covered by this statute.

Such interpretation is reasonable because it protects the buyer from unreasonable action by the Seller. For example we may assume a conditional sales contract for an used automobile. The selling price is \$1500, the buyer pays \$300 down and agrees to pay the balance in 12 equal monthly installments. The Seller charges the maximum time price differential of \$144 and makes a contract for 12 monthly payments of \$112 each. The car does not operate properly so the buyer becomes irritated

and even though he is able to pay he does not pay the first installment. In absence of the statute as interpreted by the Defendant here the seller could immediately declare the entire balance of \$1344 due and payable without asking the buyer about his problem and the seller could bring action for the \$1344 plus attorneys fees of \$201 or \$1545. The seller obtains judgment and attaches the car. Assume the seller is again able to sell the car for \$1500 the buyer has paid the \$300 down payment, plus the judgment of \$1545 less the \$1500 obtained on resale, or \$345 for the privilege of using the car for one month. And if the Seller on the Sheriff's sale does not get the \$1500 originally paid by the buyer, but gets only \$1000 then the buyer has paid \$845 for the privilege of using the car one month, or over half the price of the automobile in the first place. (To state it differently, the buyer is paying interest at a rate of from 45% to 545%). In order to guard against such unconscionable contracts, the legislature has wisely prohibited the enforcement of clauses accelerating the maturity of conditional sales contracts.

Does such an interpretation work a hardship on the Seller. The Seller may still bring suit for delinquent installments and may still recover his collection costs, attorney's fees and interest on delinquent installments. The legislature specifically reserved these rights in Section (4) and the exclusion of any language which states that the seller may still use the accelerated maturity clause also indicates the legislature wished to delete this remedy. See 50 Am. Jur. Statutes, Sec. 429, p. 450. Or the seller can exercise his rights under the usual conditional sales

contract provisions and repossess the property because of delinquency in payments. The seller now has his down payment and he has his property back. If the property has decreased in value to such an extent that he cannot recover his loss upon a resale of the property, he can still bring his action against the buyer for the contract price upon completion of the contract period. But if the property is in a merchantable condition he can resell the property and after the final maturity of the contract the seller can bring an action for any difference between the balance due and the sale price of the property and obtain a deficiency judgment. But in all these remedies the buyer is protected against paying unreasonable interest costs and attorney's fees where he has defaulted.

Defendant's interpretation of the statute does equity under Defendant's understanding of the fact situation at issue (which is only cited as an example since Judgment was for plaintiff in the District Court). Here the Defendant returned the combine and thought the contract had been cancelled with the Plaintiff retaining the combine plus the down payment. Suddenly without prior warning and without a demand for the delinquent installment and before the final maturity date of the contract the defendant is served with summons demanding the entire contract balance plus \$300 in attorney's fees and interest.

The Defendant made an attempt in June 1964 to settle the entire matter without suit. The parties reached a settlement except they were unable to agree on the amount of Plaintiff's attorney's fees. The plaintiff's attorney asked for the full amount to which she was entitled if the entire balance of the contract was due or as

provided in the contract 15 per cent of \$1924 rounded to \$300. If Plaintiff had not violated the provision of Section 15-1-2a(B) (4) which permits the buyer to pay the balance at any time before final maturity and had only brought suit for the first installment of \$941.54, the attorney's fees would have been limited to \$142.00 under the provisions of the contract. This may have been a figure which the defendant would have accepted since his actions indicated he needed a combine to perform work for the 1964 season.

The action of the District Court in denying the defendant's motion for Summary Judgment and permitting trial on the first installment before the final maturity date of the contract does not change the fact that plaintiff violated the provisions of Section 15-1-2a(B) (4) in demanding the entire balance before the final maturity of the contract. Plaintiff's action was ill-advised and it must now accept the penalty provided by the legislature in subdivision (5) which makes the contract unenforceable and requires the Plaintiff to be content with the return of the combine and the retention of the down payment.

To hold that the seller may before maturity declare the entire amount of the contract due and then claim there is no violation of subdivision (4) because the buyer can always hire an attorney and have the seller's complaint reduced by the court to the amount then owing seems to thwart the intent of the legislature. The legislature gave a right to all buyers under conditional sales contracts to pay the entire amount at any time before final maturity. If a seller can violate this right by declar-

ing the entire balance due without penalty, sellers may take the risk that the buyer in temporary financial difficulty will be unable to hire an attorney to contest the seller's violation of the buyer's right. The majority of buyers may conclude the seller had the right under the acceleration clause in the conditional sales contract and will allow judgment by default to be taken in the hope they can eventually work themselves out of the difficulty of not only paying an extremely high interest rate but attorney's fees and collection costs as well. Or the buyer may proceed in ignorance of the law and settle the matter not knowing the entire balance is not due and the attorney's fees allowable may not be so high.

But if this Court will enforce the legislative intent and will permit the seller who violates the law by declaring the entire balance due before maturity to be penalized by refusing to enforce the contract, then the legislative purpose of fixing maximum rates to be charged on conditional sales contracts will be served. The seller can still bring action for delinquent installments and obtain recovery of collection costs and attorney's fees thereon, but the buyer will have the additional time to work out his problems he contracted for in agreeing to pay the high interest rate, without also being required to pay the additional interest costs, collection costs and attorney's fees on installments not yet due which may make the goal of eventually paying one's debts seem hopeless and unattainable.

CONCLUSION

This Court should not permit the seller who violates the law by declaring the entire contract balance due be-

fore final maturity to escape the penalty provided by the legislature in Section 15-1-2a(B) (5), Utah Code Annotated, 1953.

Respectfully submitted,

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