1965

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

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GOLDEN
A Utah Co

vs.

HOWARD
CITY OF

APR 29

Appeal fr

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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

RESPONDENT'S ANSWERING BRIEF

STATEMENT OF KIND OF CASE

This case commenced as an action for the balance due on a Conditional Sales Contract, payable in two installments, one of which was past due at the time the action was filed and the second of which was accelerated by Plaintiff-Respondent. Defendant-Appellant sought dismissal of the entire Complaint by a Motion for Summary Judgment, the denial of which is the question concerned with this appeal.

DISPOSITION IN LOWER COURT

The lower Court granted Defendant's Motion for Summary Judgment, in part, in that it dismissed Plain-

tiff's Complaint as to the second installment, and denied the Motion, in part, in that it declined to dismiss Plaintiff's Complaint as to the first installment which was past due at the time Plaintiff's Complaint was filed.

Trial of the case on its merits was held before a jury as to the past-due installment only. The jury returned a verdict in favor of the Plaintiff and the Court entered judgment in favor of the Plaintiff in the amount of $941.54, plus interest at 10 percent from November 1, 1963, and for $155.24 attorney's fees and costs.

RELIEF SOUGHT ON APPEAL

Defendant-Appellant seeks a reversal of the judgment and a judgment granting Defendant's Motion for Summary Judgment dismissing Plaintiff's Complaint.

Plaintiff seeks affirmance of the lower Court's denial of Defendant-Appellant's Motion for Summary Judgment as to the FIRST installment, and affirmance of the jury verdict in favor of Plaintiff and of the judgment entered by the lower Court pursuant to the verdict of the jury.

STATEMENT OF FACTS

Plaintiff-Respondent will be referred to in this brief as Respondent and Defendant-Appellant will be referred to as Appellant.

Golden Spike Equipment Company sold to Appellant a used, 1957 Combine on July 30, 1963, the parties executing a Conditional Sales Contract which provided for a cash price of $2.500, a time price differential of $124.61,

a credit of $700 as the down payment, and that the balance of $1,924.61 be paid in two installments, the first installment of $941.61 to be paid November 1, 1963, and the balance of $983.07 to be paid November 1, 1964, with acceleration, at the election of the Seller of any unpaid belance or other sums due, should the Buyer default on the contract. Appellant refused to pay the installment due November 1, 1963, and indicated he would not pay anything further on the contract. Without prior knowledge of Respondent, Appellant returned the combine to Respondent's yard.

Respondent and Appellant made several attempts to arrive at a compromise settlement of the balance due, all of which efforts failed. As a consequence, on May 20, 1964, Respondent filed a Complaint accelerating the payment not yet due, and demanding payment of the entire balance of the contract in the amount of $1,924.61, together with interest, attorney's fees and costs.

Appellant filed a Motion for Summary Judgment to dismiss Plaintiff's complaint on the grounds the Contract was not enforceable under Section 15-1-2a of the Utah Code Annotated, 1953, as amended. The Court denied Defendant's Motion insofar as it pertained to the installment which was past due at the time of the filing of the Complaint. The minute entry in the records of the Clerk of the District Court of Box Elder County reads as follows:

> "The Motion for Summary Judgment having been submitted, and this being the time for decision on said motion, at this time the Court declines to dismiss this action on summary judgment. However, the motion

as to the second installment on the contract is granted, but as to the first installment, the motion is denied."

The case was tried before a jury on the past due installment only, at which trial Respondent was granted judgment as prayed for, without prejudice to file a Complaint on the second and last installment as the same became past due.

ARGUMENT

POINT 1.

THE TRIAL COURT DID NOT ERR IN DENYING APPELLANT'S MOTION FOR SUMMARY JUDGMENT TO DISMISS RESPONDENT'S COMPLAINT AS TO THE PAST DUE INSTALLMENT.

The filing of a Complaint declaring the entire amount of a Conditional Sales Contract due and payable does not violate a Buyer's right under Section 15-1-2a B(4) of the Utah Code Annotated, 1953, as amended, to pay the full indebtedness of a contract any time prior to final maturity.

Respondent has also been unable to find a statute similar to Section 15-1-2a of the Utah Code Annotated, 1953, and has also been unable to find any cases from other jurisdictions that are directly in point.

Appellant argues that the language of the statute is clear and proposes two actions a seller can take to violate the 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.

However, quoting from subdivision (4), the statute reads:

> "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, and in so satisfying such indebtedness shall receive a refund credit thereon for such anticipation of payments."

The remainder of the section is concerned with the amount of interest refund to which a buyer would be entitled in the event of advance payment of a contract.

It should be particularly noted that in the same sentence in which the statute provides that a buyer may satisfy in full the indebtedness evidenced by a contract at any time prior to the final maturity thereof, the Legislature provides that the buyer, in so paying the indebtedness before the final maturity of the contract, is entitled to a certain refund of interest on the anticipated payments. It should also be particularly noted that the statute makes no reference whatsoever to the acceleration of payments in a contract. Respondent therefore submits that Appellant is misinterpreting the intent of subdivision (4) and that neither of the two courses of action of a seller which he sets forth would invoke the penalty of subdivision (5). It is neither the refusal of a seller to accept advance payments nor the acceleration of payments which the legislature intended to penalize (subdivision 5), but the failure of the seller to give a "refund credit thereon for such anticipation of payments."

Appellant quotes from In Re Steven's Estate, 107 Utah 255 at 259, 130 Pac. 2nd 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." However, Appellant is searching in this case far beyond the wording of Section 15-1-2a for an interpretation and an effect that is not so much as hinted at, even though the language of Section 15-1-2a is "plain and its meaning clear."

POINT 2.

THE SUPREME COURT OF UTAH HAS, SINCE THE ENACTMENT OF SECTION 15-1-2a, UTAH CODE ANNOTATED, 1953, AS AMENDED, SPECIFICALLY RECOGNIZED THE RIGHT OF A SELLER TO ACCELERATE PAYMENTS IN A CONTRACT WHEN THE BUYER IS IN DEFAULT.

In the case of Soter vs. Snyder, decided by the Supreme Court of Utah on December 9, 1954, the respondent, Zeke Snyder, counterclaimed against appellant for the entire amount due on a conditional sales agreement, appellants having breached same by failing to make two monthly payments due thereon and respondent Zeke Snyder under the terms of said agreement having elected to declare the entire sum due and owing.

The Supreme Court of Utah affirmed the judgment of the lower court for the respondent on his counterclaim.

Appellants argued that the court erred in granting judgment on the counterclaim and further erred in providing in the judgment that Snyder retain title to the personal property until the judgment was paid in full. Quoting from the case:

"Appellants contend that such judgment was contrary to the law and the agreement of the parties because by providing that the seller may at his option declare the entire sum due and owing upon the purchasers defaulting in any of the payments when due or within 30 days thereafter, and upon such failure of the purchasers, the sellers could retake possession of said property and could retain any payments as liquidated damages, respondent thereby expressly agreed that his only remedy for breach of this contract should be repossession."

The Supreme Court replied:

"We cannot agree with this argument.

Further quoting:

"Did the court err in providing in the judgment that respondent Zeke Snyder retain his title in the property until the judgment was fully paid and satisfied? . . . We are of the opinion that the court did not err in granting such a judgment and that such a judgment merely enforces the terms of the contract into which the parties voluntarily entered."

John Soter and Tom Soter, Plaintiffs and Appellants, vs. Zeke Snyder and Strevell-Paterson Finance Co., a Corporation, Defendants and Respondents, 277 Pac. 2nd 966 (3 Utah 2nd 28).

POINT 3.

THE LEGISLATIVE INTENT IN SUBDIVISION (4) MUST BE DETERMINED BY REVIEW OF THE STATUTE AS A WHOLE.

Quoting from Sutherland Statutory Construction, Volume 2, 3rd Edition, Chapter 47:

"A statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent. Consequently, each part or section

should be construed in connection with every other part or section so as to produce a harmonious whole. Thus it is not proper to confine interpretation to the one section to be construed."

Section 4703, Page 336.

Further quoting from Sutherland Statutory Construction:

"The literal interpretation of the words of an act should not prevail if it creates a result contrary to the apparent intention of the legislature and if the words are sufficiently flexible to admit of a construction which will effectuate the legislative intention. The intention prevails over the letter, and the letter must if possible, be read so as to conform to the spirit of the act "while the intention of the legislature must be ascertained from the words used to express it, the manifest reason and obvious purpose of the law should not be sacrificed to a literal interpretation of such words." Thus words or clauses may be enlarged or restricted to harmonize with other provisions of an act. The particular inquiry is not what is the abstract force of the words or what they may comprehend, but in what sense were they intended to be used in the act. The sense in which they were used by the legislature furnishes the rules of interpretation and when this cannot be determined from the context of the act, the court may resort to extrinsic aids. Obviously, if the words of the act indicate the legislative intent other sources may not be resorted to to establish a meaning contrary to that intention."

Section 4706, page 339

Appellant argues for an interpretation of subdivision (4), which involves not just an isolated section or sentence even, but a portion of one sentence. Appellant has lifted from its context the first part of the first sentence of sub-

division (4), which states that a buyer "may satisfy in full the indebtedness of a contract at any time before the final maturity thereon" and ignored the second part of the sentence which guarantees to the buyer a refund credit. A reading of the complete sentence shows that the legislature intended to assure a buyer that, in satisfying in advance an indebtedness on a contract, the buyer is to receive a refund credit for such anticipation of payments. This refund credit would have to be given the buyer whether he voluntarily paid the contract in advance of the installments agreed to be paid, or was required to pay in advance because of an acceleration provision in event of default.

POINT 4.

THE LEGISLATIVE INTENT IN SUBDIVISION (4) IS DIRECTORY ONLY, AND THEN AS TO THE BUYER RATHER THAN THE SELLER.

All that Section 15-1-2a B(4), Utah Code Annotated, 1953, as amended, requires is that the buyer *"may satisfy"* (emphasis added) his indebtedness on a contract before the final maturity date. The statute does not require that the seller *"must"* provide the buyer with the opportunity to pay before the final scheduled contract payment regardless of statements and actions by the buyer which clearly indicate his intention not to pay.

Quoting from Sutherland Statutory Construction, 3rd Edition, Volume 2, Chapter 28:

> "The important distinction between directory and mandatory statutes is that the violation of the former is attended with no consequence, while the failure to comply with the requirements of the latter

either invalidates purported transactions or subjects the noncomplier to affirmative legal liabilities."

"This distinction grows out of the fundamental difference in the intention of the legislature in enacting the two statutes. Although directory provisions are not intended by the legislature to be disregarded, yet the seriousness of noncompliance is not considered so great that liability automatically attaches for failure to comply. The question of compliance remains for judicial determination. If the legislature considers the provisions sufficiently important that exact compliance is required then the provision is mandatory."

Section 2801, Page 214.

Thus, the legislature, in using the word "may," in Section 15-1-2a B(4) has provided the buyer with an opportunity, should he so desire, to satisfy a contractual indebtedness in full prior to the final maturity thereon, but has not placed upon the seller a mandatory obligation to hold open the contract until a certain final scheduled payment date, nor has the legislature by any mandatory language or implied language invalidated other terms of the same contract which provide for acceleration of payments.

Therefore, in the present case, where the buyer has indicated, by clear action and positive statements, that he has no intention of exercising the opportunity afforded him by the statute to make advance payment of his contract and is in fact in default therein, and because the statute is not mandatory in its language, either that the seller provide the buyer with or that the buyer has the opportunity to advance pay his contract, up until a certain

date, regardless of the buyer's express intention or default on the contract, all Appellant's rights have been afforded him and, by proper interpretation of the statute in question, Respondent cannot claim the seller should be denied the right to collect payment of his contract.

POINT 5.

IT WOULD BE AN "ABSURD" AND "UNCONSCIONABLE" INTERPRETATION OF SECTION 15-1-2a, B(4) and (5), TO HOLD THAT MERELY BY INVOKING A CONTRACTURAL PROVISION FOR ACCELERATION, A SELLER SHOULD BE DENIED THE RIGHT TO ENFORCE HIS CONTRACT.

Respondent submits two points which should here be considered.

First, Appellant sought relief in the District Court from the effect of an accelerated payment in a contract into which Appellant had freely and voluntarily entered and was granted such relief. The Complaint of the Respondent was dismissed as to the payment which had been accelerated and trial was had before a jury upon the merits of the past due payment only. The full protection of the law, including any possible protection due Appellant under Section 15-1-2a, was therefore fully accorded Appellant. However, Appellant, after losing his case before the jury, now claims that even though the trial court did not permit acceleration of the remaining payment, the Respondent is not entitled to collect, even on a past due payment, because of the fact it attempted to invoke acceleration; that the Seller must be further penalized and its entire contract declared unenforceable. This appears to

Respondent to be not only an "absurd" interpretation of the Statute in question, but an unconscionable one as well.

Second, Respondent contends that a reasonable interpretation of subdivision (4) is that the Legislature intended what the Statute says; that is, to guarantee to a buyer the right to a refund credit in the event of advance payment of his contract. This is a most equitable guarantee and one that has been protected by case law in other jurisdictions.

For example, in the case of Northtown Theater Corporation, Appellants, vs. J. J. Mickelson, Trustee of the Estate of Mill City Plastics, Inc., and Mill City Plastics Industries, Inc., its successor, Bankrupt, Appellee, which was decided in the United States Court of Appeals, Eighth Circuit, October 21, 1955, the Court or Appeals held that a mortgagee could not collect interest beyond the day to which the principal debt was accelerated.

This was an action involving a claim for interest by a mortgagee against a bankrupt estate. The Referee in Bankruptcy disallowed the claim for interest and the mortgagee appealed. The Court of Appeals held that "where chattel mortgage secured not only payment of principal debt but also payment of interest, filing of bankruptcy proceedings by debtor did not entitle mortgagee to invoke acceleration clause so as to collect unearned interest, and mortgagee was entitled only to interest up to date of payment of principal debt,"

Further quoting from the decision of the Appellate Court at page 214:

"It was the contention of the Appellant before the Referee in Bankruptcy and before the trial court that it was entitled to interest up to the date when the indebtedness became payable instead of limiting the interest to the date of payment of the debt. . . The trial court was of the view that the acceleration clauses in the circumstances disclosed by the record created a penalty and hence were unenforceable and that having invoked the acceleration clause as the basis for its claim to unearned interest it was not entitled to recover. The only question in this case is whether or not the Court erred in limiting the right to collect interest to the date of payment rather than extending it to the date when the indebtedness became due and payable according to the written agreement of the parties."

". . . . the trial court in its decision in this phase of the case, among other things, said:

". . . in cases like the present, where the mortgage is given to secure a fixed sum representing the aggregate of principal and the intrest thereon for a period of the mortgage, the rule is that a clause accelerating the maturity of the debt will not be enforced except upon cancellation of the unearned interest, for to do so would be unconscionable."

". . . In other words, if under the circumstances here disclosed Appellant could not, by invoking the acceleration clause in his mortgage, have collected the unearned interest from the debtor he could not exact payment for such unearned interest from the bankrupt's estate."

(226 Federal 2nd 212)

No claim has ever been made by Appellant that Respondent attempted to collect interest to the date when

the indebtedness became payable, but rather the record clearly shows that upon acceleration, Respondent sought recovery of the principal debt with interest thereon only to the date it had declared the entire principal balance due and payable.

In summary (1) Appellant was granted relief by the trial Court, from an accelerated payment, and (2) Respondent did not make any attempt whatsoever to collect interest from Appellant beyond the accelerated payment date. To now hold that subdivision (5) requires that Respondent be further penalized and denied the right to enforce its contract because of its mere act of trying to proceed under a contractual provision for acceleration would, Respondent submits, be a truly "absurd" and "unconscionable" interpretation of Section 15-1-2a.

POINT 6.

THE FINAL MATURITY DATE OF A CONTRACT MAY BE EITHER THE DATE UPON WHICH THE FINAL PAYMENT IS SCHEDULED TO BE PAID, OR THE DATE TO WHICH PAYMENT HAS BEEN PROPERLY ACCELERATED BY THE SELLER UPON DEFAULT OF THE BUYER.

The entire premise upon which Appellant seems to base his case is that the legislature intended the final maturity date of any and every contract to be the date of the final regular payment, regardless of the terms of the contract, and regardless of whether or not all payments are made as agreed. In laboring this point, Appellant overlooks the right of parties to voluntarily agree upon such terms as they may desire. Further, the Su-

preme Court of Utah has recognized the validity of contract provisions for the acceleration of payments in the event the buyer defaults. Respondent therefore submits that when a buyer and seller have contracted for the acceleration of payments upon the default of the buyer, the final maturity date of the contract is then no longer the date the last payment could be made if all prior payments were regularly made, but the final maturity date of the contract becomes that date upon which the seller has, in accordance with the terms of the contract between the parties, delcared the unpaid balance to be due and payable.

Under this recognition of the meaning of "final maturity date," it is not necessary to strain a part of a sentence in Section 15-1-2a B(4) in such a way as to make invalid all acceleration clauses in all contracts made in Utah. Further, a buyer is protected by the statute in his right to pay the unpaid balance of his contractural obligation in full prior to the final maturity date, and receive full, correct interest refund credit, whether that maturity date is the date the final scheduled payment becomes due or the date to which final maturity is properly accelerated by the seller upon the default of the buyer.

Since the Appellant in the present case had been fully protected through the entire period of the contract in his right to pay the balance off, had negotiated at length with the seller, and had, in fact, conveyed to the seller his refusal to make payment of his indebtedness, and was in default on the payment of the first installment, the seller was under no obligation, either statutory, moral or legal, to do a useless act and leave open the payment date

of the contract. On the contrary, the seller properly proceeded to take the only reasonable course of action to bring the disagreement to a conclusion, and that was to invoke acceleration, and declare the entire unpaid balance due and payable, thereby advancing the final maturity date to that agreed upon by the buyer in the event of his default, which unpaid balance included principal, attorney's fees and interest to the advanced maturity date, and to file legal action to recover the balance.

It should again be noted here that Respondent did not seek interest on its contract to the final payment date stated in the cantract had the payments been made on the contract as agreed, but sought intrest only to and including the day the entire balance was declared due and unpaid. Respondent, in seeking interest only to the advanced maturity date of the contract, thereby gave to the Appellant, in effect, a refund credit on the interest Appellant had agreed to pay (the time price differential), thus fully recognizing and protecting the Appellant in his statutory right to receive a refund credit in the event of advance payment of the contract. It is immaterial that the Appellant became entitled to a credit on interest because the advance maturity date of payment was brought about by his own default on the contract.

POINT 7.

APPELLANT HAS MADE PAYMENT OF THE CONTRACT BALANCE AND THIS APPEAL IS THEREFORE NOT PROPER.

Shortly after the jury returned its verdict and judgment was rendered by the Court, the Appellant paid to

Respondent not only paid the full amount of the judgment, but the full amount of the contract as well. Having done so, he indicated his intention to abide by the judgment.

There is an annotation in 39 A. L. R. 2nd, commencing at page 153, which treats this subject. There is a considerable conflict of opinion as to whether or not a judgment, once paid, can be appealed.

Page 158 of the annotation sets forth a reasonable standard by which to resolve the question, and we quote:

> "In view of the conflicting results reached by the courts under the test of voluntariness of payment or performance of a judgment, it is submitted that the test is not satisfactory.
>
> "It is submitted that the proper test is whether payment or performance of a judgment takes place under circumstances which show an intention on the part of the defeated party to abide by the judgment."

Execution had not been issued or served upon the Appellant at the time he made payment to the Respondent, nor had any demands for the payment of the judgment been made upon him, nor had any threats of execution been made him, either written or oral. No coersion of any kind had been exercised for the purpose of forcing or even encouraging Appellant to make payment of the judgment.

Further, Appellant did not pay the money into Court, subject to the hearing of an appeal, nor did he indicate any conditions to Respondent upon payment of the money to Respondent, such as its return in the event of a successful appeal. He in fact paid off the entire contract.

It should therefore be concluded that payment of the judgment by Appellant took place under circumstances which show an intention on his part to abide by the judgment. Respondent submits that under these circumstances the appeal should be dismissed.

Respondent, in summary, submits that, since Appellant was fully protected in his rights in the lower court in that a careful and cautious trial judge did not permit acceleration of an installment not yet due and partially granted Appellant's Motion for Summary judgment, and since there has been no claim whatsoever that Respondent failed to credit Appellant with a refund on his interest to the date the entire balance of the contract was declared due and payable, it would not be an equitable or justifiable interpretation of Section 15-1-2a, to penalize Respondent to the extent of declaring its entire contract unenforceable.

The Statute does not purport to outlaw or rewrite the right of parties to contract for any given due date, including an advanced or accelerated due date for default, impairment of security, insolvency or other reason. Section 15-1-2a is found under the "Interest" chapter and by title has to do with maximum rates. Subsection B(4) gives to a buyer a right to satisfy an obligation at any time before final maturity and in so satisfying to receive a refund credit. Appellant was not deprived of that right here. In fact, the lower Court could have protected his right by submitting to the jury not only the questions concerning the past due installment, but the amount of the second installment as well, less the mandatory refund credit. However, the Court bent over backwards to afford Appellant all possible rights by dismissing without

prejudice Respondent's accelerated claim for the second payment due in November of 1964.

CONCLUSION

An examination of the balance of subdivision B(4) makes it clear that the right of a buyer established thereby is to prepay and receive a refund credit for such prepayment. Everything that follows the first part of the first sentence has to do with the amount and computation of the refund. Sudivision B(5) likewise refers to errors of computation.

The evidence, the law and proper interpretation of Section 15-1-2a B (4) and (5) of the Utah Code Annotated, 1953, as amended, show that Respondent did not in any way violate the right of the buyer to satisfy in full the indebtedness he owed to the Respondent under the terms of the conditional sale contract, and the penalty provided in subdivision (5) should therefore not be invoked.

The appeal should further be dismissed because of payment in full of the judgment by Appellant under such circumstances as to indicate that he fully intended to be bound by the judgment.

Respectfully submitted,

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