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William v. Davis, Dba Davib Electric Company v. Stanley L. Barrett and Iris Barrett and Perc Peterson, Dba Timberlan Sales : Brief of Respondents Stanley L. Barrett and Iris Barrett

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In The State of the

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In The Supreme Court of the State of Utah

WILLIAM V. DAVIS, d/b/a
DAVIS ELECTRIC COMPANY
Plaintiff and Appellant,

vs.

STANLEY L. BARRETT and
IRIS BARRETT, and PERC PETERSON,
d/b/a TIMBERLAN SALES,
Defendants and Respondents.

} Case No.
11675

Brief of Respondents Stanley L. Barrett and Iris Barrett

STATEMENT OF THE NATURE OF THE CASE

This was an action brought by the Plaintiff to secure judgment for labor and materials claimed to have been extras and furnished on a construction project and to foreclose a materialman and labor lien against improved property located in Salina, Utah.

DISPOSITION IN THE LOWER COURT

The lower court granted judgment to the Plaintiff against the Defendant Perc Peterson d/b/a Timberlan Sales Company for the sum of \$1,861.15, plus interest to the date of judgment and attorney fees in the amount of \$518.00, but denied any judgment against the Defendants Barrett and denied the validity of Plaintiff's Labor and Material-man's Lien.

RELIEF SOUGHT ON APPEAL

Defendants Stanley L. Barrett and Iris Barrett seek to have affirmed on appeal the judgment of the District Court. The Defendant Perc Peterson d/b/a Timberlan Sales, does not appeal from the judgment of the District Court and seeks no relief herein.

STATEMENT OF THE FACTS

Defendants Stanley L. Barrett and Iris Barrett, husband and wife, are the owners of real property in Salina, Utah. They entered into a contract with Perc Peterson, d/b/a Timblan Sales, for the construction of a supermarket upon the property. A contract for the construction was entered into on February 18, 1966. Perc Peterson, among other things, agreed that the building would be constructed and also agreed:

“***All wiring to be done by contractor inside of building”

(Defendants' Exhibit “D”

Perc Peterson, in turn, sub-contracted the electrical wiring to the Plaintiff herein. (Defendants' Exhibit “A”) The Plaintiff agreed, for a total of \$6,000.00, to:

“Complete electrical wiring as per plans and specs.”

Perc Peterson, the general contractor, had construction plans, but did not have prepared, or use at at any time, detailed specifications. (R. 93 L. 14; R. 95 L. 1 through 11)

The Plaintiff, claimed to have installed extras not included in his contract and having a value of \$1,851.15. He alleges by his Complaint that an oral agreement for the extras was entered into with Stanley L. Barrett, one of the owners of the property involved.

Stanley L. Barrett has at all times maintained that he did not enter into any agreement with the Plaintiff for the alleged extras. He testified that at the time of conversations with Davis concerning the matter he said:

"It would be up to Perc, because he was on the contract, and my contract called for complete wiring."
(R. 147 L. 12)

The Plaintiff admits Barrett at no time acknowledged he would be responsible to pay the account (William Davis testimony R. 105 L. 26 through 28).

Davis also submitted his first statement for the alleged extras to Perc Peterson, general contractor. (R. 62 L. 26)

A witness to part of the conversations between Stanley L. Barrett and the Plaintiff was Mr. Dick Scott. He supported the testimony of Mr. Barrett and said that Mr. Barrett had stated he had bought a "turn key job", and he didn't feel that he should have to pay for it (alleged extras). (R. 131 L. 25 through 30)

Stanley L. Barrett was informed by Mr. Davis that Davis was going to file a lien against his property in the event the matter was not settled. Therefore, he took the precaution of not making any additional payments until the matter was settled and received a lien waiver from Mr. Davis, at which time he paid the sum of \$2,800.00 from his funds. (See Defendants' Exhibit "C")

ARGUMENT

THE COURT CORRECTLY FOUND NO CONTRACT EXISTED BETWEEN STANLEY L. BARRETT AND THE PLAINTIFF, WILLIAM L. DAVIS, AND CORRECTLY FOUND THE PLAINTIFF HAD NO LIEN AGAINST THE PROPERTY OF THE DEFENDANTS BARRETT.

POINT I

THE PREPONDERANCE OF THE EVIDENCE SHOWS THAT THE DEFENDANT BARRETT AT NO TIME ASSUMED THE ITEMS CLAIMED BY THE PLAINTIFF WERE EXTRAS OR THAT HE WOULD PAY FOR THEM.

POINT II

THE PLAINTIFF EXECUTED A LIEN WAIVER AT THE COMPLETION OF HIS CONTRACT AFTER BEING INFORMED THAT NO PAYMENT WOULD BE MADE UNTIL THE ACCOUNT COULD BE SETTLED AND A WAIVER GIVEN.

POINT I

THE PREPONDERANCE OF THE EVIDENCE SHOWS THAT THE DEFENDANT BARRETT AT NO TIME ASSUMED THE ITEMS CLAIMED BY THE PLAINTIFF WERE EXTRAS OR THAT HE WOULD PAY

The Appellant does not contend the District Court erred in construing the law applying to the matter in controversy. He contends there is no reasonable evidence upon which to base the Findings of Fact and Judgment. Although there are minor conflicts in the testimony of the parties, the evidence clearly supports the judgment of the Court; particularly when viewed under the rule of this Court that evidence on appeal will be viewed in the light

most favorable to the party for whom judgment was entered. (Stanley -vs- Grants 2 U2d 421, 276 P2d 489)

The following Findings of Fact are now challenged,
(R. 40)

4. "That the materials and services performed by the Plaintiff at the request of Perc Peterson d/b/a Timberlan Sales, have not been paid for and there is a balance due and owing in the amount of \$1,861.-15."

5. "That the Plaintiff, William V. Davis, d/b/a Davis Electric Company, did on the 4th day of October, 1966, waive, release and surrender all rights he had or to which he may be entitled under and by virtue of mechanic's or materialmens' lien laws of the State of Utah. Said release was granted to Stanley L. Barrett for good and valuable consideration and did fully release all claims and lien rights that the said Plaintiff may have acquired against the Barrett Market property specifically described in Paragraph 2 above."

We have treated this matter in considerable detail in the preceding statement of facts. We will attempt to avoid as much repetition as possible.

The Finding of the District Court of no oral agreement between Stanley L. Barrett and the Plaintiff appears to be overwhelmingly supported by the record. The Plaintiff, William L. Davis, at no time testified that Barrett agreed to pay for the alleged extras. The Plaintiff expressly admitted that he received no direct promise from Barrett. (R. 105 L. 24 through 28)

The Plaintiff also testified that when he first billed out the alleged extras he sent the statement to the general contractor, Perc Peterson. (R. 102 L. 18 through 28)

One of the Plaintiff's witnesses, Dick Scott, was called and testified concerning the conversation between the Plaintiff Davis and the Defendant, Stanley L. Barrett. He said

the conversation was in early July at the time equipment was being moved into the store. He stated that Barrett informed the Plaintiff Davis that he was not responsible for the additional items discussed by Davis and that he had bought a "turn key job" and he didn't feel that he should have to pay any extras. (R. 131 L. 7 through 30; R. 132 L. 1 through 6)

At the time of the conversation reported by Mr. Scott and upon which Mr. Davis relies as the foundation for his contract, no work was done in regard to the alleged extras for which the Plaintiff now claims reimbursement. The Plaintiff was put on notice at this early date that Stanley L. Barrett would not assume any responsibility for payment. This notice placed an obligation upon the Plaintiff to determine whether the work was included in his own contract with Perc Peterson where he agreed to:

"Complete electrical wiring as per plans and specs."
(Defendant's Exhibit "A")

Or, if it was an extra to be paid by the general contractor, Perc Peterson under his contract, which provided he would do:

"All electrical wiring to be done by contractor inside building." (Defendant's Exhibit "D")

The testimony of Stanley L. Barrett was positively that he at no time agreed to pay the Plaintiff for extras. Barrett at all times maintained that he informed Davis:

"I don't know who is going to pay for it, but I am not." (R. 147 L. 8 - 9)

Also Barrett testified that he told Davis:

"It would be up to Perc, because he was on the contract and my contract called for complete wiring."
(R. 147 L. 12 - 13)

The record conclusively demonstrates that no witness, including the Plaintiff himself, heard the Defendant Stanley L. Barrett say that he would pay for the alleged extras.

We submit the District Court correctly found that there was no oral agreement between Plaintiff, William L. Davis, and Defendant, Stanley L. Barrett.

POINT II

THE PLAINTIFF EXECUTED A LIEN WAIVER AT THE COMPLETION OF HIS CONTRACT AFTER BEING INFORMED THAT NO PAYMENT WOULD BE MADE UNTIL THE ACCOUNT COULD BE SETTLED AND A WAIVER GIVEN.

The Plaintiff informed Defendant Stanley L. Barrett that he was going to lien his place if he didn't straighten out the problem on the extras at the time the work was completed. (R. 78 L. 19 through 25; R. 148 L. 3 through 8)

Barrett informed Davis that he would not pay anything on the account unless he cleared up the problem and signed a Waiver. (R. 48 L. 13 through 30). Davis at that time, informed Barrett he would not sign a Waiver and Barrett said, "All right, then I won't give you a check." (R. 149 L. 2)

Later, Mr. Davis agreed to accept the check and sign a Lien Waiver. Mr. Barrett took the precaution of forwarding a Cashier's Check in the sum of \$2,800.00 to a Brigham City Bank to be held in escrow until the waiver was received. (R. 81 L. 29 - 30; R. 82 L. 1 through 8; R. 149 L. 1 through 15)

Exhibit "C" is a copy of the Lien Waiver executed and

filed by the Plaintiff¹ in order to receive from escrow the \$2,800.00 Cashier's Check which was deposited there. It was apparent that some attempt was made by the Plaintiff to mislead Defendant Stanley L. Barrett by the wording of the Release. However, the Release construed in the light of the conditions for the escrow and the requirement that Stanley L. Barrett pay the sum of \$2,800.00 at the time of receiving the Waiver, would estop² the Plaintiff from claiming the Release meant nothing.

The District Court did not permit the Plaintiff to deny the effect of the instrument and thereby permit a willful act to mislead the Bank or Defendant Barrett.

We submit the District Court correctly found that any lien which might have been held by the Plaintiff Davis against the Barrett property was fully released. The Court did award the Plaintiff the full amount he was claiming, together with attorney fees and costs against the Defendant Perc Peterson, and did further make a provision to apply funds held from Perc Peterson by Defendant Stanley L. Barrett to that judgment. The Judgment of the Court appears to be highly favorable to the Plaintiff Davis under the circumstances.

CONCLUSION

We respectfully submit the judgment of the Trial Court should be affirmed on appeal. The evidence amply

1. 17 Am Jur 2d, Section 276. "It is fundamental that doubtful language in a contract should be interpreted most strongly against the party who selected the language, especially where he seeks to use such language to defeat the contract or its operation . . ." "Also, in the case of doubt or ambiguity a contract will be construed most strongly against the party who drew or prepared it, or whose attorney drew or prepared it."
2. I. X. L. Stores Co. v. Success Markets. 98 Utah 160, 97 P 2d 577. The law upon the subject, equitable estoppel, is well settled. The vital principle is, that he who, by his language or conduct, leads another to do what he would not otherwise have done, shall not subject such person to loss or injury by disappointing the expectations upon which he acted. Such a change of position is sternly forbidden.

supports the findings made and the circumstances under which the Lien Waiver was executed by the Plaintiff, William V. Davis, and delivered to the Defendant, Stanley L. Barrett, would fully and completely release any lien rights he may have acquired in the Barrett property.

Respectfully submitted,

OLSEN AND CHAMBERLAIN
By TEX R. OLSEN

Attorney for Defendants
Stanley L. Barrett and Iris Barrett.