

1969

A. M. Castle and Company v. H. G. Bagley : Brief of Appellant

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc2

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors. Horace J. Knowlton; Attorney for Appellant

Recommended Citation

Brief of Appellant, *A.M. Castle v. Bagley*, No. 11828 (1969).
https://digitalcommons.law.byu.edu/uofu_sc2/4921

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

IN THE SUPREME COURT OF THE STATE OF UTAH

A. M. CASTLE AND COMPANY
A Corporation,

Plaintiff and Respondent,

vs.

H. G. BAGLEY,

Defendant and Appellant,

Case No.
11828

BRIEF OF APPELLANT

Appeal from the Judgment of the
Third District Court for Salt Lake County
Hon. Leonard W. Elton, Judge

FILED
DEC - 3 1969

Horace J. Knowlton

214 Tenth Avenue
Salt Lake City, Utah

Attorney for Appellant

E. Earl Greenwood, Jr.

444 S. State Street
Salt Lake City, Utah

Attorney for the Respondent

TABLE OF CONTENTS

	Page
STATEMENT OF THE KIND OF CASE	1
DISPOSITION IN THE LOWER COURT..	2
RELIEF SOUGHT ON APPEAL	2
STATEMENT OF FACTS	2
ARGUMENT	3
POINT I. THERE BEING NO AMOUNT CERTAIN IN THE BODY OF THE INSTRUMENT, IT WAS ERROR TO GRANT A JUDGMENT THEREON.	3
POINT II. THERE WAS NO CONSIDERATION FOR THE INSTRUMENT SUED UPON. THE COURT ERRED IN AWARDDING JUDGMENT THEREON.	4
POINT III. THE SIGNATURE OF THE DEFENDANT DOES NOT APPEAR UPON THE INSTRUMENT SUED UPON AND IT WAS ERROR TO AWARD JUDGMENT ON IT.	6
CONCLUSION	7

Texts Cited

Official Comment Vol. 2 page 168	5
Corbin on Contracts, Sec. 351, Page 224 of Vol. 2....	5

STATUTES CITED

70A-3-104, Utah Uniform Commercial Code	3
44-1-29 Utah Code Annotated, 1953	4
70A-3-306	4
70A-3-408	5
70A-3-401 Utah Uniform Commercial Code	7

IN THE SUPREME COURT OF THE STATE OF UTAH

A. M. CASTLE AND COMPANY
A Corporation,

Plaintiff and Respondent,

vs.

H. G. BAGLEY,

Defendant and Appellant,

Case No.
11828

BRIEF OF APPELLANT

STATEMENT OF THE KIND OF CASE

The action was brought by the plaintiff against the defendant for the collection of a promissory note with an "alternative first cause of action" on an open account. The defendant defended against the note that it was not a good promissory note, and that there was of action that they were against the statute of frauds—an attempt to hold the defendant for an antecedent debt of another—the General Metals Company, Inc., a corporation.

DISPOSITION IN THE LOWER COURT

The court found the issues in favor of the plaintiff, reforming the note to include a sum certain "Two Thousand Two Hundred Ninety Three and 25/100 Dollars," and awarded judgment in favor of the plaintiff for the sum of \$2,660.13, and costs.

RELIEF SOUGHT ON APPEAL

The defendant seeks a reversal on the ground that the note was invalid and without consideration and that the action is an attempt to hold the defendant for the antecedent debt of another and against the statute of frauds.

STATEMENT OF FACTS

The defendant, Mr. Bagley was employed by the plaintiff in May of 1966 and continued his employment until September of 1967; (R-34 line 9-10). At the time of the commencement of his employment he had been employed by the General Metals Company, Inc., a Utah corporation, for at least two months and had been placing orders with the plaintiff for the General Metals (Exhibit 1 P and R-52). The plaintiff continued to do business with General Metals until September 13th, 1966, (Exhibit 1P) and on the 28th of

April 1967, while Mr. Bagley was still employed by it, the plaintiff asked him to assume a personal liability for the payment of the account of the General Metals Company, Inc., by signing and executing a promissory note, (Exhibit 2P) by both he and his wife, secured by an assignment of a contract for the purchase of their home, (Exhibit 3P). The assignment was never executed (R-66 line 12 and R-96 line 19). The note was not signed by his wife nor did it at any time have written in it the amount of the obligation (Exhibit 2P), and contrary to its terms it was not "secured by an assignment of contract bearing even date" (R-93 line 4).

ARGUMENT

The defense of the defendant is based upon three points, (1) that the note sued upon was incomplete as to the amount to be paid, (2) that there was no consideration for the note sued upon and (3) that it was never intended to be a legal enforceable promissory note.

POINT I

THERE BEING NO AMOUNT CERTAIN IN THE BODY OF THE INSTRUMENT, IT WAS ERROR TO GRANT A JUDGMENT THEREON.

Utah's Uniform Commercial Code provides, 70A-3-104 under the heading "Form of negotiable instru-

ments - (1) Any writing to be a negotiable instrument within this chapter must (b) contain an unconditional promise or order to pay a sum certain in money and no other promise, order, obligation or power given by the maker or drawer except as authorized by this chapter."

As to incompleated instruments, the same code provides that "(1) When a paper whose contents at the time of signing show that it is intended to become an instrument is signed while still incomplete in any necessary respect it cannot be enforced until completed, but when it is completed in accordance with authority given it is effective as completed."

POINT II

THERE WAS NO CONSIDERATION FOR THE INSTRUMENT SUED UPON. THE COURT ERRED IN AWARDDING JUDGMENT THEREON.

44-1-29 Utah Code Annotated, 1953 provided, "Absence or failure of consideration is matter of defense as against any person not a holder in due course"

This provision was enacted into 70A-3-306 of the Uniform Commercial Code as follows:

"Rights of one not holder in due course. Unless he has the rights of a holder in due course any person takes the instrument subject to

“(b) all defenses of any party which would be available to an action on a simple contract; and

“(c) the defenses of want or failure of consideration, nonperformance of any condition precedent, non-delivery, or delivery for a special purpose (section 70A-3-408).”

Note 3 under the heading “Purpose of Changes” under “Official Comment” on page 168 of Vol. 2 of the Uniform Laws Report, has the following comment under Sec. 3-408, which is our 70A-3-408:

“With respect to the necessity or sufficiency of consideration, other obligations or an instrument are subject to the ordinary rules of contract law relating to contracts not under seal . . . The provisions of the original Section 28 as to absence or failure of consideration is now covered by the section dealing with the rights of one not a holder in due course.”

The promise to pay the debt of another not in writing is not a sufficient consideration to support a simple contract.

“. . . on the other hand, if the consideration given by the plaintiff was given for a promise of a third person and was antecedent to the making of the defendant's promise, it cannot operate as a consideration to make the defendant's promise enforceable . . . in such a case therefore, the promise seems more likely to be a promise to answer for the previously existing debt of another; and it is certain to be unenforceable, whether it is within the statute or not, unless

there is a new consideration given for it. If there is no new consideration, it seems clear that the promise must be within the statute as promise to pay the debt of another, and the decision for the defendant may be rested equally on the lack of consideration or on the statute of frauds." Section 351, page 224, Vol. 2 of Corbin on Contracts.

POINT III

THE SIGNATURE OF THE DEFENDANT DOES NOT APPEAR UPON THE INSTRUMENT SUED UPON AND IT WAS ERROR TO AWARD JUDGMENT ON IT.

The uncontradicted testimony in the case is that the writing that appears on the note sued upon (Exhibit 2P) is not the signature of the defendant. In his testimony, he says:

"That's not my signature, though, and you know it." (R-55 line 30).

". . . and my wife did not sign that, and that's why you know as well as I do there was never any signature intended" (R-76 line 10).

The plaintiff by its credit manager Mr. Williams, testified that it was acquainted with the defendant's signature:

"Q Now, are you acquainted with his signature, Mr. Bagley's signature?"

"A I think so, yes.

“Q You have seen him sign a lot of things?

“A Yes.” (R-53 lines 10 to 14).

There are at least three plain signatures of the defendant in the record. One on the second page of Exhibit 3P, a full signature, and two with initials, forming parts of Exhibit 4P and being the pink copies of invoices 16386 and 16611, and it is submitted that they in no way resemble the writing on Exhibit 2P, the note sued upon, and which Mr. Bagley testified that he wrote on “just as a facetious act” (R-74 line 10).

Section 70A-3-401 of the Utah Uniform Commercial Code provides that “(1) no person is liable on an instrument unless his signature appears thereon.”

CONCLUSION

Since the note sued upon was incomplete, without consideration and was without the signature of the defendant, was never at any time intended to be a legally enforceable instrument, it is respectfully submitted that the court erred in awarding judgment for the plaintiff and that the judgment should be reversed.

Respectfully submitted,

HORACE J. KNOWLTON
Attorney for the Defendant.