

1994

Bill Murphy v. Glen Spencer and Cecil Spencer : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

BILL MURPHY,)
Plaintiff and Appellant,) Case No. 940746-CA
vs.)
GLEN SPENCER and CECIL SPENCER,) Priority No. 15
Defendant and Appellee,)

BRIEF OF APPELLANT

APPEAL FROM AN ORDER SATISFYING JUDGMENT IN THE FIFTH JUDICIAL
DISTRICT COURT, IN AND FOR IRON COUNTY, STATE OF UTAH,
THE HONORABLE ROBERT T. BRAITHWAITE PRESIDING

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COURT OF APPEALS

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IN THE UTAH COURT OF APPEALS

BILL MURPHY,)
Plaintiff and Appellant,) Case No. 940467
vs.)
GLEN SPENCER and CECIL SPENCER,) Priority No. 15
Defendant and Appellee,)

BRIEF OF APPELLANT

APPELLATE JURISDICTION

Jurisdiction to hear this appeal is conferred upon the Court of Appeals by provision of U.C.A. § 78-2a-3(k).

STATEMENT OF ISSUES

1. Does the evidence support the finding that both of the agents, Mitchell Schoppman and E. Kent Winward, had authority to enter into an agreement for an accord and satisfaction between the Spencers and Bill Murphy?
2. Does the evidence support the finding that there was a meeting of the minds to establish a contract for a full accord and satisfaction?

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

No constitutional provisions, statutes or rules are applicable.

NATURE OF THE CASE

A judgment and a supplemental judgment were entered against the Defendants. The Defendant moved the trial court for the entry of an order satisfying the judgment. After an evidentiary hearing, the trial court entered an order satisfying the judgment. Plaintiff appeals the order satisfying the judgment.

RELEVANT FACTS OF THE CASE

On April 29, 1992, judgment was entered against the Spencers in the principal sum of \$2,690.00 (R 32-33). The judgment was supplemented on May 19, 1993, adding an additional amount of \$10,800.00 for treble damages and \$328.00 for attorney's fees (R 62-63).

At a supplemental proceeding in October of 1993, Murphy's counsel met with Spencers and their counsel and discussed settlement for a sum of approximately \$3,000.00, with the bulk of that money to be paid within thirty days (R 129). Spencers were informed that any settlement would have to be approved by Bill Murphy (R 116, 124). No response was given to the Spencers or their counsel by Bill Murphy or his attorney (R 129). Spencers and their counsel did not present any payment proposals or specific amounts (R 125).

In December of 1993, Spencers were refinancing their home. Cedar Land and Title was conducting the title work on that loan (R 103). Mitchell Schoppman of the title company contacted counsel for Murphy about obtaining a release for the property, located on Interstate Drive in Cedar City ("Property"). He was informed that the decision was to be made by Mr. Murphy (R 103, 105-6). Mitchell Schoppman only requested a "clearance of the judgment against the real property the bank was involved with and that's all we had requested" (R 110).

Mr. Schoppman testified that the scope of his agency in representing the spencers consisted of doing title work on the Property and he did not even discuss the matter with the Spencers until closing (R 112-13). Neither Glen or Cecil Spencer had any contact with either Bill Murphy or his counsel prior to the loan closing (R 117, 123). Counsel for Bill Murphy was under the impression that the release of the judgment would be a partial release on the Property (R 127). A partial release of judgment was eventually provided to Mitchell Schoppman by counsel for Murphy (R128).

Based upon the foregoing facts, the district court entered an order satisfying judgment (R 92-94).¹

SUMMARY OF ARGUMENT

The trial court found that Plaintiff's counsel and Defendant's title agent entered into an accord and satisfaction. Neither of the parties had authority to enter into that particular agreement. The scope of their agency would not permit them to enter into an accord and satisfaction of the entire judgment. This matter was preserved for the appeal (R 132-33).

The second point on appeal is that there was never an agreement for a full satisfaction of the judgment. The contractual requirement of assent or meeting of the minds was never proven or shown by the moving party. This matter was preserved for appeal in the trial court

¹ The district court recognized the precarious position it was in when it granted the order satisfying the judgment.

[THE COURT] I think this is really a close case and I'm struggling with the decision and have, while you've been talking, both of you, because of a lack of paperwork to specifically answer the question. I guess we wouldn't be here today if you did have a letter that said this is a partial release or this is a full release. But I need to make a decision and what I'm going to do is find that there was an accord and satisfaction. I could be reversed either way I rule on this case and not have any argument with who reversed me, because I think it's a real close case. (R 133-34).

(R 131-32).

ARGUMENT

POINT I

THE ACCORD AND SATISFACTION FAILS BECAUSE NEITHER PARTY HAD THE AUTHORITY OR THE ABILITY TO ENTER INTO SUCH AN AGREEMENT.

The trial court held that conversations between Plaintiff's counsel and Defendant's agent, Mitchell Schoppman of Cedar Land Title created an accord and satisfaction.

Accordingly, we look first at the scope of the agency of Mitchell Schoppman and E. Kent Winward. The undisputed testimony of Mitchell Schoppman was that the scope of his agency was limited to seeking a release of the judgment on one particular piece of property. (R 112).

His authority did not extend beyond doing title work for the Spencers. (R 112). No reason exists for believing that Mr. Schoppman had the authority or the ability to enter into a contract of accord and satisfaction on behalf of the Spencers. In fact, Mr. Schoppman never even discussed the matter with the Spencers. (R 113).

Not only did Mr. Schoppman not have authority to act for the Spencers, counsel for Bill Murphy did not have any authority to enter into a settlement for his client. The undisputed testimony was counsel did not have the authority to enter into a settlement without the express consent of Bill Murphy (R 116, 124). A document was eventually prepared that gave a partial release of the judgment for the payment (R 128).

The typical principal/agent scenario involves a party trying to disavow the actions of their agent. The Utah Courts have held for that scenario that "the general principal of the

laws of agency is that principals are bound by the acts of their agents which are within the apparent scope of the authority of the agent and a principal will not be permitted to deny such authority against innocent third parties who have relied on that authority." Forsyth v. Pendleton, 617 P. 2d 358, 360 (Utah 1980).

However, in this case, the Spencers want to expand the agency of Mitchell Schoppman to allow him to enter into an accord and satisfaction on their behalf. Mitchell Schoppman was acting as agent for the Spencers in a limited capacity. For the same reason that principals cannot deny authority of their agents, principals cannot expand authority when innocent parties have relied on that limited authority. This point is reiterated in the *Restatement Agency* 2d § 37(1): "Unless otherwise agreed, general expressions used in authorizing an agent are limited in application to acts done in connection with the act or business to which the authority primarily relates."

For this reason, Mitchell Schoppman's representation of the Spencers is limited to his involvement with the Property. Similarly, E. Kent Winward's agency was clearly defined as being limited to the authorization which he received from Bill Murphy. The only authority Mr. Winward had was to grant a partial release (R 127). The agents did not have the authority or the ability to enter into a contract for an accord and satisfaction of the entire judgment.

POINT II

NO EVIDENCE SUPPORTS A MEETING OF THE MINDS FOR AN ACCORD AND SATISFACTION

The Utah Court has defined four elements that are essential to finding a contract for

accord and satisfaction: "Essential to its validity are, (1) a proper subject matter; (2) competent parties; (3) an assent or meeting of the minds of the parties; and (4) a consideration given for the accord." Sugarhouse Fin. Co. v. Anderson, 610 P.2d 1369, 1372 (Utah 1980).

The key issue is whether a meeting of minds ever took place between the Spencers and Murphy.

The October meeting between Spencers and counsel for Mr. Murphy was too vague to create any anticipation that a payment from the title company in December would suffice to satisfy the judgment. The pay off amount was never set (R 129). The method of payment was never determined (R 129). In fact, neither party communicated further after the October meeting (R 129). Without an agreement on amount and method of payment, no meeting of the minds could have taken place.

The discussions between the title company and Mr. Winward did not relate in any way to the October meeting. No evidence was presented that tied the two events together. The discussions were limited to "what was required to clear the judgment as to the properties we were dealing with" (R 109). The agreement was for a partial release for a specific piece of property. No evidence was presented that would show an agreement for a full and complete satisfaction of the judgment.²

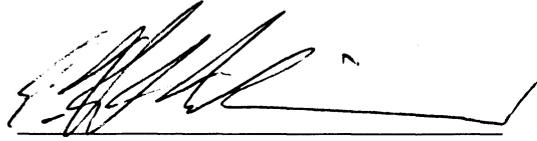
CONCLUSION

Based on the foregoing, it is respectfully submitted that the Order Satisfying Judgment

² In the Sugarhouse case, the Court found that the entry into debt to make partial payment constituted valid consideration for an accord. While the Spencers were entering into debt, it was not for the purpose of resolving this judgment. The judgment had already attached to the property, necessitating the contact with the title company. Murphy received no consideration for the supposed agreement, other than a partial payment for a partial release. Failure of consideration would be an additional reason preventing the entry of the order satisfying the debt.

be reversed and the balance due on the judgment and supplemental judgment be reinstated.

RESPECTFULLY SUBMITTED this 27th day of February, 1995.



E. Kent Winward
Attorney for Plaintiff and Appellant

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the within and foregoing to Floyd Holm, 965 South Main, Suite 3, P.O. Box 765, Cedar City, Utah 84720 by first class mail, postage prepaid on the 27th day of February, 1995.



ADDENDUM

No Addendum is necessary.