

DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

United Parcel Service, Inc. v. Buchwald Jewelers

476 So. 2d 772 (Fla. 3d DCA 1985) · No. 85-574 · Decided October 15, 1985

SUMMARY

United Parcel Service appealed a summary judgment awarding Buchwald Jewelers \$14,600 for breach of contract after UPS accepted a cashier’s check instead of the cash-only payment specified in the C.O.D. instructions. The court held that Buchwald Jewelers did not ratify UPS’s unauthorized act because it accepted the check without knowing that UPS had violated the cash-only requirement. The Third District Court of Appeal affirmed the judgment.

CASE DETAILS

COURT	District Court of Appeal of Florida, Third District
WRITING FOR THE COURT	Hendry, J.; Nesbitt, J.; Daniel S. Pearson, J.
JURISDICTION	Florida
DECIDED	October 15, 1985
DOCKET	85-574
DISPOSITION	affirmed
PROCEDURAL POSTURE	United Parcel Service appealed an adverse final summary judgment awarding Buchwald Jewelers \$14,600 in damages, plus interest and costs, for breach of contract.
STANDARD OF REVIEW	Review of final summary judgment; the opinion does not expressly state a separate standard of review.
PRECEDENTIAL VALUE	Published Florida District Court of Appeal opinion; precedential within the court’s jurisdiction unless later limited or overruled.
PARTIES	United Parcel Service, Inc. v. Buchwald Jewelers

TOPICS

- breach of contract
- commercial litigation
- commercial
- contracts
- waiver of breach

PRACTICE AREAS

- Contracts
- Commercial litigation
- Agency and ratification

QUESTIONS PRESENTED

1. Whether Buchwald Jewelers ratified UPS's unauthorized acceptance of a cashier's check, thereby waiving the contractual requirement that UPS collect cash only.
2. Whether summary judgment for Buchwald Jewelers on its breach-of-contract claim was proper.

HOLDINGS

1. A principal does not ratify an agent's unauthorized act unless the principal was fully informed of the material facts and approved the act. Buchwald Jewelers's acceptance and deposit of the cashier's check did not constitute ratification because it undisputedly lacked knowledge that UPS had violated the cash-only instruction.
2. The final summary judgment awarding Buchwald Jewelers damages for UPS's breach of contract was affirmed.

KEY QUOTATIONS

“Before one may infer that a principal ratified the unauthorized act of his agent, the evidence must demonstrate that the principal was fully informed and that he approved of the act.” (476 So. 2d at 773)

FACTUAL BACKGROUND

Buchwald Jewelers instructed UPS to collect \$14,600 in cash upon delivery of merchandise shipped to a consignee in St. Louis. UPS instead accepted a cashier's check, which was later returned as counterfeit. Buchwald Jewelers accepted and deposited the check without objection because its manager believed UPS had collected cash and obtained the check only for transmittal. The undisputed evidence showed that Buchwald Jewelers did not know UPS had acted contrary to its cash-only instruction when it accepted the check.

PROCEDURAL HISTORY

Buchwald Jewelers sued UPS for breach of contract and other claims after UPS accepted a cashier's check instead of cash for a C.O.D. shipment. UPS asserted ratification as an affirmative defense. The trial court granted Buchwald Jewelers summary judgment on the breach-of-contract claim, and UPS appealed.

DISPOSITION

affirmed

CASES CITED

- Ball v. Yates, 158 Fla. 521, 29 So. 2d 729 (1946), cert. denied, 332 U.S. 774, 68 S. Ct. 66, 92 L. Ed. 359 (1947)
- Pedro Realty, Inc. v. Silva, 399 So. 2d 367 (Fla. 3d DCA 1981)
- Bach v. State Board of Dentistry, 378 So. 2d 34 (Fla. 1st DCA 1979)
- G & M Restaurants Corp. v. Tropical Music Service, Inc., 161 So. 2d 556 (Fla. 2d DCA 1964)

OPINION

PER CURIAM.

476 So. 2d 772 (1985) UNITED PARCEL SERVICE, INC., Appellant, v. BUCHWALD JEWELERS, Appellee. No. 85-574. District Court of Appeal of Florida, Third District. October 15, 1985. *773 Fowler, White, Burnett, Hurley, Banick & Strickroot and James N. Floyd, Miami, for appellant. Therrel, Baisden, Meyer and Weiss and Julian R. Benjamin, Miami Beach, for appellee.

Before HENDRY, NESBITT and DANIEL S. PEARSON, JJ. HENDRY, Judge. United Parcel Service, Inc. (UPS), defendant below, appeals an adverse final summary judgment awarding damages for breach of contract arising from its failure to obtain payment in cash when it delivered goods to the consignee for Buchwald Jewelers.

The issue on appeal concerns whether the shipper, Buchwald Jewelers, ratified the action of the carrier, UPS, when it accepted a cashier's check from UPS, thereby waiving the requirement that the carrier collect cash only.

The facts may be briefly stated. On or about April 13, 1984 Buchwald Jewelers arranged for UPS to ship merchandise to the consignee in St. Louis, Missouri. Buchwald Jewelers specified on the C.O.D.[1] tag that UPS should accept, upon delivery, cash only in the amount of \$14,600.00. UPS delivered the merchandise to the consignee and collected a cashier's check payable to Buchwald Jewelers in the amount of \$14,600.00.

On or about April 26, 1984 Buchwald Jewelers accepted the cashier's check from UPS without objection and deposited it for collection in its Miami bank account. The check was returned by the issuing bank as uncollectable, marked "counterfeit." Buchwald Jewelers brought suit against UPS for breach of contract, as well as other counts not relevant to this appeal.

UPS answered the complaint and raised the affirmative defense of ratification. Buchwald Jewelers moved for summary judgment on its breach of contract claim. The supporting affidavit of Robert Buchwald, a manager for Buchwald Jewelers, was attached. Mr. Buchwald stated that he believed UPS had collected cash from the consignee and that UPS had obtained the cashier's check for transmittal to Buchwald Jewelers.

That affidavit was not controverted by UPS. The trial court entered summary judgment in favor of Buchwald Jewelers, awarding damages of \$14,600.00, plus interest and costs. Appellant UPS contends that Buchwald Jewelers ratified UPS' action because Buchwald Jewelers knew of the contractual limitation upon UPS to accept cash only, but it nevertheless accepted and deposited a form of payment not in conformity with the contractual terms.

We disagree. Before one may infer that a principal ratified the unauthorized act of his agent, the evidence must demonstrate that the principal was fully informed and that he approved of the act. *Ball v. Yates*, 158 Fla. 521, 29 So. 2d 729 (1946), cert. denied, 332 U.S. 774, 68 S. Ct. 66, 92 L. Ed. 359 (1947); *Pedro Realty, Inc. v. Silva*, 399 So. 2d 367 (Fla.

3d DCA 1981); *Bach v. State Board of Dentistry*, 378 So. 2d 34 (Fla. 1st DCA 1979); *G & M Restaurants Corp. v. Tropical Music Service, Inc.*, 161 So. 2d 556 (Fla. 2d DCA 1964). In the instant case *Buchwald Jewelers* accepted the cashier's check without knowledge that UPS had acted contrary to its express instructions. Since it was undisputed that *Buchwald Jewelers* was not fully informed, UPS' ratification defense fails as a matter of law.

For the foregoing reasons and based upon the authorities cited, the final summary judgment in favor of *Buchwald Jewelers* is affirmed. Affirmed. NOTES [1] "C.O.D. `Collect on delivery.' These letters import the carrier's liability to the consignor to collect the cost of the goods from the consignee, and, if not collected, to return the goods to the consignor."

BLACK'S LAW DICTIONARY 233 (5th ed. 1979).