CALIFORNIA COURT OF APPEAL, THIRD DISTRICT

Hamilton Jewelers v. Department of Corporations

37 Cal. App. 3d 330 (Cal. Ct. App. 1974) · No. 14067 · Decided February 15, 1974

SUMMARY

The California Court of Appeal considered whether Hamilton Jewelers' diamond sales promotion, which promised a full refund plus 5 percent interest upon return of the diamond within three years, involved the offer or sale of a security under California Corporations Code section 25019. Applying California's risk-capital approach, the court held that the transaction was not a security because the diamonds were worth at least the purchase price and therefore adequately secured the customer's investment. The declaratory judgment in favor of Hamilton was affirmed.

CASE DETAILS

COURT	California Court of Appeal, Third District
WRITING FOR THE COURT	Janes, J.; Richardson, P.J.; Regan, J.
JURISDICTION	California
DECIDED	February 15, 1974
DOCKET	14067
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Department of Corporations appealed from a declaratory judgment holding that Hamilton Jewelers' diamond sales promotional plan did not constitute the offer or sale of a security under California Corporations Code section 25019.
STANDARD OF REVIEW	Not expressly stated; the court reviewed the undisputed facts and the legal characterization of the transaction under Corporations Code section 25019.
PRECEDENTIAL VALUE	Published California Court of Appeal opinion and precedential authority subject to California law governing published appellate decisions.
PARTIES	Department of Corporations, Commissioner of Corporations v. Hamilton Jewelers

TOPICS

blue sky laws · statutory interpretation · administrative law · commercial litigation

PRACTICE AREAS

securities regulation · administrative law · commercial litigation · statutory interpretation

QUESTIONS PRESENTED

1. Whether Hamilton's diamond sales promotion constituted an offer or sale of a security as an evidence of indebtedness under Corporations Code section 25019.
2. Whether the promotion constituted an investment contract under Corporations Code section 25019.
3. Whether the transaction involved risk capital subject to regulation under California's Corporate Securities Law.

HOLDINGS

1. The transaction was not an offer or sale of a security because the purchaser's investment was fully secured by a diamond worth at least the purchase price, leaving the purchaser with no risk capital.
2. The risk-capital test governs even when a transaction appears literally to fall within the statutory definition of security.

KEY QUOTATIONS

> *"No hard and fast rule fixes that which constitutes a `security.' Rather, the question is determined on a case by case basis. The crucial question is whether the transaction comes within the regulatory purpose of the Corporate Securities Law."* (335)

> *"Thus California follows the "risk capital" approach in ascertaining whether a transaction involves a "security" within the meaning of the Corporate Securities Law."* (335)

> *"The customer, being adequately secured, would have placed no "risk capital" with Hamilton; and, therefore, the transaction would not come within the regulatory purpose of the Corporate Securities Law even though 5 percent interest might ultimately be paid to the customer."* (336)

FACTUAL BACKGROUND

Hamilton advertised one-carat diamonds ordinarily sold for $500 or more for a purchase price of $500. Under the advertisement and written warranty, a purchaser could return the diamond within three years and receive the full purchase price plus five percent interest. The Department concluded that the plan offered a security as an evidence of indebtedness or investment contract, while the trial court found that the diamonds' fair market value, without the warranty, was at least the purchase price.

PROCEDURAL HISTORY

After the Department notified Hamilton that its advertised diamond-refund plan constituted an offer of a security, Hamilton filed an action for declaratory relief. The trial court entered judgment declaring that the plan was not an offer or sale of a security. The California Court of Appeal affirmed.

DISPOSITION

affirmed

CASES CITED

- Los Angeles Metropolitan Transit Authority v. Brotherhood of Railroad Trainmen, 54 Cal. 2d 684, 688-689 (1960)
- Innes v. McColgan, 47 Cal. App. 2d 781, 784 (1941)
- People's Finance & Thrift Co. v. Shaw-Leahy Co., 214 Cal. 108, 109 (1931)
- State of California ex rel. Department of Employment v. General Insurance Co., 13 Cal. App. 3d 853, 860 (1970)
- United States v. Austin, 462 F.2d 724, 736 (10th Cir. 1972)
- United States v. Jones, 450 F.2d 523, 525 (5th Cir. 1971)
- S.E.C. v. W.J. Howey Co., 328 U.S. 293, 298-299 (1946)
- State v. Hawaii Market Center, Inc., 52 Haw. 642, 648-651, 485 P.2d 105, 109-110 (1971)
- Sarmento v. Arbax Packing Co., 231 Cal. App. 2d 421, 424 (1964)
- Silver Hills Country Club v. Sobieski, 55 Cal. 2d 811, 814-815 (1961)
- Brown v. World Church, 272 Cal. App. 2d 684, 692 (1969)
- Reinsch v. City of Los Angeles, 243 Cal. App. 2d 737, 746 (1966)
- People v. Walberg, 263 Cal. App. 2d 286, 294 (1968)
- People v. Leach, 106 Cal. App. 442, 448-450 (1930)
- In re Leach, 215 Cal. 536, 546 (1932)
- Auto Equity Sales, Inc. v. Superior Court, 57 Cal. 2d 450, 455 (1962)