

SUPREME COURT OF COLORADO

Gordon v. Pettingill, 105 Colo. 214

96 P.2d 416 (1939) · Decided October 30, 1939

SUMMARY

Gordon sought to recover payments made by his bookkeeper, Baumgarten, who used company checks to pay personal rent owed to Pettingill. The court held that Gordon was barred by ratification and equitable estoppel because he placed Baumgarten in a position to issue the checks and failed to discover or challenge the transactions for an extended period, affirming judgment for Pettingill.

CASE DETAILS

COURT	Supreme Court of Colorado
WRITING FOR THE COURT	Burke; Chief Justice Hilliard; Justice Bakke
JURISDICTION	Colorado
DECIDED	October 30, 1939
DISPOSITION	affirmed
PROCEDURAL POSTURE	Gordon brought an action in justice court to recover \$180 paid through checks allegedly misappropriated by his bookkeeper. Gordon obtained judgment in justice court, but after a jury-waived trial on an agreed statement of facts, the county court entered judgment for Pettingill and costs. Gordon sought review by writ of error.
STANDARD OF REVIEW	Because the facts were undisputed, the court reviewed the county court's construction of the stipulated facts and application of the law.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Colorado
PARTIES	Gordon v. Pettingill

TOPICS

- commercial litigation
- contracts
- landlord tenant
- real estate

PRACTICE AREAS

- agency
- commercial litigation
- contracts
- landlord tenant

QUESTIONS PRESENTED

1. Whether Pettingill was liable to Gordon for accepting company checks issued by Baumgarten to pay Baumgarten's personal rent.
2. Whether Gordon's delay and failure to discover or challenge the payments resulted in ratification or equitable estoppel barring recovery.
3. Whether ratification required proof that Gordon had actual full knowledge of the facts.

HOLDINGS

1. Gordon was estopped from recovering from Pettingill because Gordon placed Baumgarten in charge of the business, authorized the bank to honor checks bearing Baumgarten's signature, and failed for an extended period to discover or challenge the payments, thereby enabling Pettingill to rely on Baumgarten's apparent authority.
2. Gordon's prolonged silence and failure to exercise reasonable diligence supported ratification of Baumgarten's issuance of the checks, particularly as to the second and third checks.
3. Actual full knowledge is not required where reasonable diligence would have disclosed the relevant facts; the law may presume knowledge of facts that a party would have discovered through reasonable diligence.

KEY QUOTATIONS

"When one of two innocent parties must suffer for the fraud of a third, he who placed the wrongdoer in a position to perpetrate it is chargeable." (217)

"A litigant will not be heard to say he was ignorant of facts which it was to his interest to know, and which, if awake, he would have known." (218)

"We conclude therefore that on the ground of ratification, as well as on the ground of estoppel, the trial court was right." (218)

FACTUAL BACKGROUND

Gordon operated a highway construction business, and his bookkeeper Baumgarten had authority to sign company checks for payroll, machinery, and office supplies, including his own salary. Without Gordon's knowledge, Baumgarten used three company checks totaling \$180 to pay rent owed to his landlord, Pettingill. Gordon was absent for much of 1935 and 1936 and did not discover the embezzlement until Baumgarten left employment in July 1937, after which Gordon demanded repayment from Pettingill.

PROCEDURAL HISTORY

Gordon sued Pettingill for repayment of \$180 in rent payments made with Gordon Construction Company checks issued by Gordon's bookkeeper, Baumgarten. The justice court entered judgment for Gordon. On appeal, the county court tried the matter without a jury on stipulated facts and entered judgment for Pettingill; the Colorado Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- DeBaca v. Higgins, 58 Colo. 75, 143 P. 832
- Gerard v. McCormick, 130 N.Y. 261, 29 N.E. 115
- Bank v. Richmond Elec. Co., 106 Va. 347, 56 S.E. 152, 7 L.R.A. (N.S.) 571
- Dana v. National Bank, 132 Mass. 156
- Brown v. People's Nat. Bank, 170 Mich. 416, 136 N.W. 506, 40 L.R.A. (N.S.) 657
- Sigel-Campion Co. v. Ardohain, 71 Colo. 410, 207 P. 82

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