

APPELLATE TERMS OF THE SUPREME COURT OF NEW YORK

Kieselstein v. Shoebel

110 N.Y.S. 907 (App. Term 1908) · Decided June 5, 1908

OPINION

PER CURIAM.

PER CURIAM. Between September 27, 1907, and November 5, 1907, the firm of Ahrens & Slimer, doing business as the New York Shirt Company, sold and delivered to defendant goods of the value and at the agreed price of \$52.90.

On the 11th day of December, 1907, the New York Shirt Company made an assignment in writing of this claim to the plaintiff. The said assignment was signed, ■on behalf of the said New York Shirt Company, by said Ahrens ■only. Thereafter, but on the same day, the said New York Shirt Company, by said Ahrens, wrote, and sent by registered mail, a notice to the defendant of such assignment, and at the same time a demand for payment was sent to defendant on behalf of the plaintiff as such assignee of the claim.

Both of these notices were received by the ■defendant on December 12, 1907. Some time in December, but whether before or after December 12th seems somewhat in doubt, a check, dated December 18, 1907 (but which date the defendant claims was ■subsequent to the date of the actual making and delivery of the check), for \$52.90, payable to the New York Shirt Company, was made by ■defendant and delivered to Jerome Eisner, a lawyer.

This check was thereupon indorsed, "New York Shirt Company, by Julius Slimer," and underneath this indorsement appears also the name of "Jerome Eisner" as second indorser. This check was duly paid through the ■clearing house on December 18, 1907. It will be remembered that Slimer did not join in the assignment to plaintiff of the claim in suit, or in the notice of such assignment which was sent to defendant on December 11th.

The other partner, Ahrens, who alone signed' ■said assignment and notice on behalf of the New York Shirt Company, is asked the following question: "Q. Did you ever receive any payment of the goods, upon which this action is brought, from Mr. Shoebel, defendant? A. I did not." The defendant) whose whole testimony is confused and indefinite, testifies that he received a letter from said Jerome Eisner demanding payment of the claim as assignee of the same, and, being beset, apparently, by two assignees, the defendant made out his ■check to the original creditor, and delivered it to said Eisner, in payment of the claim.

The details as to Eisner's title are not given. Did the other partner, Slimer, also on behalf of the New York Shirt Company, make an assignment of the claim in suit to Eisner at, or before, or after,

the other assignment by Ahrens to plaintiff? Ahrens and Slimer were copartners, and either might execute an assignment of the claim.

The rule of law is that a debtor who pays the *909original creditor after due notice of the assignment of the claim to-another makes such payment at his peril; but the evidence here is so confused, meager and indefinite, and generally so unsatisfactory, that it is almost impossible to determine the real circumstances of the case.

We think, therefore, in the interests of justice, another trial should be granted, when more light can be thrown upon the situation. Judgment reversed, and new trial ordered, with costs to abide the event.