SUPREME COURT OF UTAH

Armed Forces Insurance Exchange v. Harrison

2003 UT 14 (Utah 2003) · No. No. 990662 · Decided April 25, 2003

SUMMARY

The Utah Supreme Court reviewed a judgment holding Judi Harrison, president and sole shareholder of Restoration Systems, Inc., personally liable for fraud arising from restoration billing submitted to Armed Forces Insurance Exchange. The court held that the complaint did not plead Harrison's personal participation in fraud with sufficient particularity, but determined that the pleading error was harmless because the issue was tried by consent. The court remanded for the trial court to supplement its findings regarding Harrison's specific participation in the alleged fraudulent representations and each element of fraud.

CASE DETAILS

COURT	Supreme Court of Utah
WRITING FOR THE COURT	Associate Chief Justice Durrant; Chief Justice Durham; Justice Russon; Justice Wilkins; Judge Judith M. Billings, sitting by designation
JURISDICTION	Utah
DECIDED	April 25, 2003
DOCKET	No. 990662
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Judi Harrison appealed from a judgment entered after a bench trial holding her personally liable for fraud and awarding damages, attorney fees, costs, expert expenses, and punitive damages. The Utah Supreme Court remanded for additional findings of fact concerning Harrison's personal participation in fraud.
STANDARD OF REVIEW	Summary judgment is reviewed for correctness, or de novo. Bench-trial factual findings are reviewed for clear error and are given due regard because of the trial court's opportunity to assess witness credibility. The adequacy of findings is reviewed to determine whether the judgment follows logically from and is supported by the evidence. An award of costs is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published precedential opinion

PARTIES	Judi Harrison, Restoration Systems, Inc., John Does 1-5 v. Armed Forces Insurance Exchange

TOPICS

fraud · pleadings · summary judgment · appellate procedure · costs

PRACTICE AREAS

fraud · civil procedure · appellate procedure · corporate law · insurance · costs

QUESTIONS PRESENTED

1. Whether AFIE's complaint pleaded fraud against Harrison with the particularity required by Utah Rule of Civil Procedure 9(b).
2. Whether the failure to grant summary judgment based on the deficient fraud pleading was prejudicial or harmless.
3. Whether the trial court's findings of fact adequately established the elements of fraud and Harrison's personal participation in fraudulent conduct.
4. Whether liability for fraud could rest on the recreated Job Cost Detail Report when AFIE knew it was inaccurate and did not rely on it.
5. What limits apply to recovery of expert witness fees if Harrison is again found liable for fraud.

HOLDINGS

1. The complaint did not plead fraud against Harrison with the particularity required by Utah Rule of Civil Procedure 9(b) because it merely recited the elements of fraud and failed to allege specific facts connecting Harrison personally to the alleged fraudulent conduct.
2. The trial court erred by denying summary judgment on the deficient pleading, but the error was harmless because AFIE could have amended its complaint and the issue was actually tried without prejudice to Harrison.
3. A corporate officer may be personally liable for fraudulent acts that the officer personally commits or in which the officer participates, but cannot be held liable merely because of corporate office or for fraud committed by the corporation or other agents without the officer's knowledge or participation.
4. The findings were inadequate and incomplete because they did not specifically identify the representations in which Harrison participated or which she directed, AFIE's reliance on each such representation, or Harrison's knowledge of falsity or recklessness and intent to induce action.
5. No fraud liability could rest on Harrison's participation in recreating the Job Cost Detail Report because AFIE did not rely on that report to its detriment.
6. If Harrison is again found liable for fraud, any award for expert witness fees must be limited to the amount authorized by statute; fees paid above the statutory allowance are litigation expenses rather than recoverable taxable costs.

KEY QUOTATIONS

> *"Thus, Harrison can be held liable for fraudulent acts that she personally committed or in which she participated, but she cannot be held liable for fraudulent acts that she did not know of or participate in that were committed by other agents of the corporation or by the corporation itself."* (42)

> *"Because the trial court did not specify all of the representations that Harrison specifically participated in or directed, we cannot address Harrison's argument that the evidence was inadequate without making our own findings of fact identifying precisely which of Harrison's actions supported the conclusion that she is liable for fraud."* (44)

> *"Because AFIE knew that the recreated JCDR contained inaccuracies and in no way relied on it, the JCDR does not constitute a misrepresentation for purposes of establishing fraud against Harrison."* (45)

> *"Although AFIE failed to plead fraud with the requisite particularity in its complaint, that error is harmless because it is not reasonably likely that the error changed the outcome of the case."* (47)

FACTUAL BACKGROUND

A fire damaged the Metcalfs' home, which was insured by AFIE. Restoration Systems, Inc., led by its president and sole shareholder Judi Harrison, performed restoration work and billed AFIE and the Metcalfs hundreds of thousands of dollars. AFIE alleged that RSI submitted duplicative and fabricated billing materials, including three fabricated subcontractor invoices and a recreated job-cost report. After a bench trial, the trial court found RSI liable on multiple theories and Harrison personally liable for fraud, but its findings did not identify with sufficient specificity the representations in which Harrison participated, AFIE's reliance on those representations, or Harrison's fraudulent intent.

PROCEDURAL HISTORY

AFIE sued RSI and Harrison in 1995 on contract and tort theories arising from restoration work at an insured home's property. After a five-day bench trial, the trial court found RSI liable on several theories and Harrison personally liable for fraud. The Supreme Court held that the fraud pleading deficiency was harmless because the matter was tried and could be treated as properly raised under Utah Rule of Civil Procedure 15, but concluded that the trial court's findings were too incomplete to permit appellate review and remanded for specific findings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must make specific and complete findings regarding which representations Harrison personally participated in or directed, whether AFIE relied on each representation, and whether Harrison knew the representations were false or made them recklessly with intent to induce action. The court must determine whether those findings support personal fraud liability, conduct further proceedings if necessary, and state the method of any fraud-based damages. Any expert witness fee award must be limited to the statutory allowance.

CASES CITED

- Roderick v. Ricks, 2002 UT 84, ¶ 2, 54 P.3d 1119
- Tanner v. Carter, 2001 UT 18, ¶ 2, 20 P.3d 332
- Salt Lake City v. Silver Fork Pipeline Corp., 913 P.2d 731, 733 (Utah 1995)
- Gold Standard, Inc. v. Getty Oil Co., 915 P.2d 1060, 1066-68 (Utah 1996)
- Educators Mut. Ins. Ass'n v. Allied Prop. & Cas. Ins. Co., 890 P.2d 1029, 1032 (Utah 1995)
- Crookston v. Fire Ins. Exch., 817 P.2d 789, 800 (Utah 1991)
- Franco v. Church of Jesus Christ of Latter-day Saints, 2001 UT 25, ¶ 36, 21 P.3d 198
- Chapman v. Primary Children's Hosp., 784 P.2d 1181, 1186 (Utah 1989)
- Williams v. State Farm Ins. Co., 656 P.2d 966, 971 (Utah 1982)
- Heathman v. Hatch, 13 Utah 2d 266, 268, 372 P.2d 990, 991 (1962)
- Mecham v. Benson, 590 P.2d 304, 308 (Utah 1979)
- Snowden v. Taggart, 91 Colo. 525, 17 P.2d 305, 307 (1932)
- Price v. Armour, 949 P.2d 1251, 1255 (Utah 1997)
- State v. Robertson, 932 P.2d 1219, 1227 (Utah 1997)
- State v. Germonto, 868 P.2d 50, 57-58 (Utah 1993)
- Caputo v. Pfizer, Inc., 267 F.3d 181, 191 (2d Cir. 2001)
- Seamons v. Andersen, 122 Utah 497, 502, 252 P.2d 209, 212 (1953)
- Gill v. Timm, 720 P.2d 1352, 1353 (Utah 1986)
- Lamb v. Bangart, 525 P.2d 602, 609 (Utah 1974)
- Taylor v. Gasor, Inc., 607 P.2d 293, 294-95 (Utah 1980)
- Lundstrom v. Radio Corp. of Am., 17 Utah 2d 114, 117-18, 405 P.2d 339, 341 (1965)
- Acton v. Deliran, 737 P.2d 996, 999 (Utah 1987)
- Dugan v. Jones, 615 P.2d 1239, 1250 (Utah 1980)
- Kilpatrick v. Wiley, Rein & Fielding, 2001 UT 107, ¶ 55, 37 P.3d 1130
- Buzas Baseball, Inc. v. Salt Lake Trappers, Inc., 925 P.2d 941, 949 (Utah 1996)
- Young v. State, 2000 UT 91, ¶¶ 4, 15-18, 16 P.3d 549
- Frampton v. Wilson, 605 P.2d 771, 774 (Utah 1980)
- Morgan v. Morgan, 795 P.2d 684, 686 (Utah Ct. App. 1990)