8-6-2018

Kenworth Sales Company v. Skinner Trucking, Inc. Appellant's Reply Brief Dckt. 45764

IN THE SUPREME COURT OF THE STATE OF IDAHO

KENWORTH SALES COMPANY, a Utah corporation, doing business in the state of Idaho,

Plaintiff/Appellant,

vs.

SKINNER TRUCKING, INC., an Idaho corporation; JAMES E. SKINNER, an individual; and DAVID C. SKINNER, an individual;

Defendants/Respondents.

Supreme Court No. 45764

Twin Falls County District Court
Case No. CV42-16-2539

APPELLANT'S REPLY BRIEF

APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT

HONORABLE RANDY J. STOKER, DISTRICT JUDGE PRESIDING

Michael D. Danielson
BENOIT, ALEXANDER, HARWOOD, HIGH & MOLLERUP, PLLC
P.O. Box 366
Twin Falls, ID 83303-0366

Attorneys for Plaintiff/Appellant

Joe Rockstahl
ROCKSTAHL LAW OFFICE, CHTD.
510 Lincoln Street
Twin Falls, ID 83301

Attorneys for Defendants/ Respondents

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Appeal from the District Court of the Fifth Judicial District of the State of Idaho, in and for Twin Falls County, Honorable Randy J. Stoker, presiding.

I. INTRODUCTION

Kenworth filed its *Appellant's Brief* on 6/21/18. The Skinners subsequently filed their *Respondents' Brief* on 7/18/18 and Kenworth submits the following reply to the arguments contained therein.

II. ARGUMENT

A. The District Court Erred in Its Approach to the First Element of a Prima Facie Unjust Enrichment Claim.

In its *Appellant's Brief*, Kenworth argues that the trial court erred in its application of the first element of an unjust enrichment claim. Kenworth pointed out that a benefit is considered conferred, not just when one "satisfies the debt of another," but also when one "gives the other some interest in money, land, or possessions, performs services beneficial to or at the request of the other...or in any other way adds to the other's advantage." *Med. Recovery Services, LLC v. Bonneville Billing and Collections, Inc.*, 157 Idaho 395, 398, 336 P.3d 802, 805 (2014). The trial court determined that with regard to Kenworth's decision to pay off the residual amounts owing under the lease, no debt was satisfied, and that therefore no benefit was conferred, completely ignoring the remainder of the language from *Med. Recovery Services*.[1]

In their *Respondents' Brief*, the Skinners double down on that error, refusing to address the remainder of the *Med. Recovery Services* test and claiming that "It is true that there was no debt to satisfy, which does cause the first prong to fail." *Respondent's Brief*, p. 5. Again, although

[1] Kenworth also argues that the trial court erred in finding that no debt was satisfied, but that argument will not be re-addressed here.

Kenworth asserts that a debt *was* satisfied, this conclusion ignores the fact that Kenworth both (1) performed a service beneficial to the Respondents and (2) added to their advantage. As such, the trial court's limited analysis of the first prong of Kenworth's prima facie unjust enrichment claim was error.

B. The District Court Erred When It Considered and Applied the Unpled "Officious Intermeddler" Affirmative Defense.

The Skinners, in their *Respondents' Brief*, accuse Kenworth of misleading the Court and making up law because "[n]o cases discuss the requirement that the [officious intermeddler] doctrine be pled as an affirmative defense." *Respondents' Brief*, p. 8. However, Kenworth has been clear in its position that, although Idaho caselaw has never explicitly stated that the officious intermeddler defense is an affirmative defense, it *is* an affirmative defense and has been treated as such by Idaho's courts.[2] *See Appellant's Brief*, p. 9. That position remains true for the reasons stated in Kenworth's prior brief and for the reasons contained therein, Kenworth simply requests that this Court so hold.

The Skinners also argue that the officious intermeddler doctrine need not be affirmatively pled or be waived because "I.R.C.P. 8(c)(1) lists the defenses that must be pled affirmatively, and the list does not include the officious intermeddler doctrine." *Respondents' Brief*, p. 8. But, the list contained in Rule 8(c)(1) is not exhaustive.[3] *Garren v. Butigan*, 95 Idaho 355, 358, 509 P.2d 340, 343 (1973) ("Although I.R.C.P. 8(c) enumerates nineteen affirmative defenses, the listing is not intended to be exhaustive or exclusive."). As mentioned in Kenworth's *Appellant's Brief*, an affirmative defense is one in which "the defendant has the burden of introducing evidence and

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[2] One of the purposes of an appeal is to have certain areas of the law, heretofore unaddressed, clarified.
[3] Rule 8(c)(1) reads "In Responding to a pleading, a party must affirmatively state any avoidance or affirmative defense, *including*:..." (emphasis added). Nowhere does the Rule limit itself to the affirmative defenses listed therein.

persuading the finder of fact...which the Plaintiff may defeat by the introduction of evidence of his own." *Appellant's Brief*, p. 10 (citing to *Williams v. Paxton*, 98 Idaho 155, 163, 559 P.2d 1123, 1131, n.1 (1976)). Based on the following statement from the *Respondents Brief*, this is exactly how the defense was treated by defense counsel at trial:

> Finally, in order to ensure that the officious intermeddler doctrine applied, Skinner's counsel had to confirm at trial with each of Kenworth's witnesses that there was no agreement made with Skinner. Once it was confirmed that there was no agreement, then Skinner's counsel was able to conclusively find that the officious intermeddler doctrine did apply. Once Kenworth rested his case, and both parties were preparing for their closing briefs, Skinner's counsel was able to apply the doctrine in full. Based on these facts, raising the doctrine earlier in the case would have been impossible for Skinner.

Respondents' Brief, p. 8

Ignoring the fact that such a statement contradicts a prior statement made by defense counsel to Judge Shindurling, on the record, that he didn't even discover the doctrine until researching for his closing brief after trial,[4] the scenario described fits the *Paxton* language regarding affirmative defenses exactly. The Respondents argue that they sought to elicit certain evidence at trial (e.g., that there was no agreement) that they thought would establish the defense, allowing them to argue it in their closing brief, but that they couldn't be sure until after trial.[5] The problem is, in failing to raise it in pleadings before trial or even to move to amend at the close of evidence, they failed to put Kenworth on notice as required by I.R.C.P. 8 or to give Kenworth *any* chance to respond. Therefore, the defense was waived and its application by the trial court was error.

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[4] Supp. Tr. 6:4-7 ("And I didn't find the cases on officious intermeddler until I was doing my written closing argument. But somehow on my mind it was—there was no agreement.").

[5] The Respondents' assertion that raising the doctrine earlier (i.e. either before or during trial) was impossible is makes absolutely no sense. Defenses are routinely pled on the chance that they may potentially apply at trial.

Additionally, the Respondents' argue that Kenworth's reason for conferring a benefit on the Skinners is invalid based on *Curtis v. Becker*, 130 Idaho 378, 941 P.2d 350 (Ct. App. 1997). That argument is inapposite, as the facts in *Becker* and the those involved here couldn't be further apart.

The *Becker* Court denied an unjust enrichment claim on the basis of unclean hands, as plaintiff in that case, who was obligated under an agreement with the city to acquire notarized authorization from property owners before acting on their behalf, failed to do so. The issue of the officious intermeddler doctrine was only discussed in a concurring opinion, and even then, that concurrence relied heavily on the fact that the plaintiff not only failed to get the defendants' consent before beginning work, the defendants objected to the work, requested that the plaintiff cease all work through their attorney, and even tried to barricade their property to keep the plaintiff out. *Id.* at 385, 941 P.2d at 357. *Becker* does not stand for the proposition, as the Respondents assert, that a valid reason for conferring a benefit cannot exist where consent has not been given and where the party conferring the benefit also stands to benefit therefrom.

The Respondents admit that Kenworth acted for the purpose of keeping the Skinners in business. *Respondents' Brief*, p. 9. That purpose is valid, despite the Skinners' lack of express consent.[6] Therefore, even if the officious intermeddler defense was not waived, the trial court erred by recognizing and then subsequently ignoring Kenworth's valid reason for taking the action that it did.[7]

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[6] The trial court recognized this reason but then overlooked it in its analysis. R. 193 (*Findings of Fact and Conclusions of Law*).

[7] Again, the trial court recognized that an individual is not an intermeddler "if such a person has a valid reason for conferring the benefit, such as protecting an interest," but then cursorily determined that because there "was no testimony that Kenworth had an interest in the trucks," Kenworth was an officious intermeddler. R. 190-191, 193 (*Findings of Fact and Conclusions of Law*). It was as if the trial court read the language from *Curtis* so as to limit valid reasons for intermeddling to situations wherein an interest is being protected. Such is simply not the case.

III. CONCLUSION

For the reasons argued above, as well as those provided in prior briefing in this appeal, the Appellant respectfully requests the relief sought in its Appellant's Brief.

DATED this 6th day of August, 2018.

Respectfully Submitted,

BENOIT, ALEXANDER, HARWOOD,
HIGH & MOLLERUP, PLLC

By _____
Michael D. Danielson
Attorneys for Plaintiff/Appellant

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of August, 2018, I caused a true and correct copy of the foregoing **APPELLANT'S REPLY BRIEF** to be served upon the following attorney in the following manner:

Joe Rockstahl	Hand Delivered	☐
ROCKSTAHL LAW OFFICE, CHTD.	U.S. Mail	☐
510 Lincoln Street	Fax *(208) 734-8820*	☐
Twin Falls, ID 83301	Email	☒
(Attorney for Defendants/Respondents)	**joe@joerockstahl.com**	
	Electronic Court Filing	☒

_____
Michael D. Danielson