LexisNexis

Neutral
As of: March 18, 2014 12:40 PM EDT

Bliss v. Sneath

Supreme Court of California, Department Two
June 12, 1894
No. 15434

Reporter: 103 Cal. 43; 36 P. 1029; 1894 Cal. LEXIS 716

GEORGE D. BLISS, Respondent, v. R. G. SNEATH, Appellant

Prior History: **[***1]** Appeal from a judgment of the Superior Court of San Mateo County.

Disposition: For the reasons given in the foregoing opinion, the judgment is reversed, and a new trial ordered.

Case Summary

Procedural Posture

Defendant tenant sought review of the decision of the Superior Court of San Mateo County (California), which failed to pass upon his demurrer and entered judgment in favor of plaintiff landlord in the landlord's action to recover rent alleged to be due upon an indenture of lease. As a partial defense, the tenant set up a claim against the landlord's wife.

Overview

The tenant contended that, in all the transactions set forth in the complaint, the landlord acted solely and wholly as the agent of the his wife, that the present action was prosecuted by him as an agent of his wife and for her exclusive benefit. The tenant further averred a demand against the wife and asked that such demand be set off and deducted from the landlord's claim against him. The court overturned the trial court's ruling and ordered a new trial, holding that the tenant's allegations were sufficient to show that the landlord was suing merely as an agent of his wife. The court found that: (1) the tenant's defense consisted of a claim against the landlord's principal for one-half the value of a division fence between the lands of the tenant and those of the wife; (2) the liability arose from the fact that landlord's principal made use of a fence built by the tenant under circumstances which created the liability; (3) as the wife benefitted from such use, the law required that she pay for it, as all the elements of an implied contract we met; and (4) the tenant's demand would have been a proper defense, by way of setoff, had the action been brought in the name of the wife.

Outcome

The court reversed the trial court's judgment and ordered a new trial.

Syllabus

The facts are stated in the opinion.

Counsel: *Garrett W. McEnerney*, and *Stanly, Hayes & Bradley*, for Appellant.

Byron Waters, for Respondent.

Judges: Temple, C. Haynes, C., and Searls, C., concurred. McFarland, J., Fitzgerald, J. De Haven, J., concurring.

Opinion by: TEMPLE

Opinion

[*43] **[**1029]** This is an appeal from a judgment for plaintiff upon the pleadings.

The action is for rent alleged to be due upon an indenture **[*44]** of lease. It is contended that the complaint does not sufficiently aver demand and nonpayment. The allegation is: "That the plaintiff has demanded the payment of said sum, but to pay the same, or any part thereof, the defendant refused, and still refuses." A general demurrer was interposed, which apparently was never passed upon, but was waived by answering. The objection not having been taken by special demurrer, the pleading must now be held sufficient. (*Grant v. Scheerin*, 84 Cal. 197.)

The defendant answered, admitting the demand of plaintiff, but **[***2]** setting up, as a partial defense, a claim against plaintiff's wife.

The answer avers that in all the transactions set forth in the complaint, plaintiff acted solely and wholly as the agent of Martha S. Bliss, his wife; that the present action is prosecuted by him as agent of said Martha S. Bliss, and for her sole and exclusive use, benefit, and behalf. The answer then proceeds to aver a demand against said Martha S. Bliss, which existed at the time the action was commenced, and asks that such demand be set off

against, and deducted from, the claim of plaintiff, and admits plaintiff's right to take judgment for the excess of plaintiff's demand over and above his claim against Martha S. Bliss. On motion, plaintiff obtained judgment for the full amount of his demand without trial.

The sufficiency of the allegations in the answer must be tested by the same rule applied to the complaint. If the allegations in the answer would be sufficient in a complaint to sustain a judgment, they are sufficient here. Judged by this rule, the allegation is sufficient to show that plaintiff is suing merely as the agent of his wife. The defense is not really a counterclaim. That is a demand which **[***3]** may be the basis of a judgment against the plaintiff.

Here the matter pleaded is purely defensive to the demand sued on.

"Where the agent sues in his own name," says Mr. **[*45]** Evans (Evans on Agency, 387), "the defendant may avail himself of all defenses which would be good at law and in equity."

"*a*. As against the agent who is the plaintiff on the record; or *b*. As against the principal for whose use the action is brought." (Mecham on Agency, sec. 762.)

It is said, however, that, even admitting this principle, it cannot apply here, because the defense set up is a debt created or arising from a statutory liability, and is not, therefore, a cause of action arising upon a contract.

The defense consists of a claim against plaintiff's principal for one-half the value of a division fence between the lands of defendant and those of Mrs. Bliss. They are coterminous owners, and defendant built a fence on the line between their lands. Mrs. Bliss afterwards inclosed her land, using this fence as a part of her inclosure. Whereupon, under the provisions of *section 841 of the Civil Code*, she became indebted to him for one-half the value thereof.

The section referred to is **[***4]** one of many code provisions relating to the rights and duties of property holders, and the liability arising from the conditions mentioned cannot justly be said to be a statutory liability. The liability arises from the fact that plaintiff's principal made use of a fence built by the defendant under circumstances which create the liability. She has been benefited, and the law says she must pay for it. Here are all the elements of an implied contract. The obligation to pay legal interest could be claimed, with much greater plausibility, to be a statutory liability, and therefore not a contract liability. The fact that the Civil Code has changed some common-law rules, by which the rights and obligations of persons were ascertained, does not make the new or changed obligations any less obligations arising from implied contracts than were the different obligations fixed by the common law.

"There are also cases in which the law will imply a contract to pay money from the fact of there being **[*46]** already a legal obligation to pay it, although the transaction, in its origin, was entirely unconnected with contract, and there has been no promise in fact." (1 Chitty on Contracts, **[***5]** 86.)

On all such obligations an action in form *ex contractu* would lie, and I have no doubt the demand **[**1030]** would be a proper defense, by way of setoff, had the action been brought in the name of Mrs. Bliss. It is equally so here.

I think the judgment should be reversed, and a new trial had.

For the reasons given in the foregoing opinion, the judgment is reversed, and a new trial ordered.
Concur by: DE HAVEN

Concur

De Haven, J., concurring. I concur in the judgment. Assuming the matters alleged in the answer to be true, it was error to give a judgment in favor of plaintiff for the full amount demanded in the complaint.