Chapter 1 : 32 Wn.2d 86, FRANK EGGARS et al., Respondents, v. P. D. LUSTER et al., Appellants

- luster v. commonwealth of pennsylvania et al.

Checks cashed within the four-month period preceding an assignment for the benefit of creditors effect a preferential transfer which may be avoided by the assignee, notwithstanding the checks were delivered prior to the beginning of the period; provided that the checks were cashed in payment of an antecedent debt. Where the circumstances of the case indicate that a given transaction amounts to an extension of credit, it will be treated as such, regardless of whether the parties have so considered it. Appeal from a judgment of the superior court for King county, Shorett, J. Todd, of counsel , and Leopold M. Yeomans, of counsel , for respondents. Appellant, plaintiff below, is the Seattle Association of Credit Men, common-law assignee for the benefit of the creditors of Hosmer Associates, Inc. Hosmer executed an assignment for the benefit of its creditors on April 29, The suit is brought under the authority of Rem. Words and terms used in this act shall be defined as follows: Any preference made or suffered within four 4 months before the date of application for the appointment of a receiver may be avoided and the property or its value recovered by such receiver. This check, which, because it was paid by the bank prior to the commencement of the four-month period, is not in issue here, was accompanied by a memorandum reading as follows: We are also submitting our check for the balance with the distinct understanding that this check is to be held until the customer has paid for this shipment in full. We will immediately notify you upon its acceptance. Accompanying this purchase order were two checks, No. But this is only true, of course, if the checks are cashed in payment of an antecedent debt. Before a preference may arise, Oct. Accordingly, a transaction by which the debtor parts with something now in return for something he acquires now or is to acquire in the future, is not without the bounds of a valid transfer. The mere exchange of property of equal value within the four months preceding insolvency will not constitute a preference. It appears to be the contention of respondents here that North End was never an antecedent creditor of Hosmer, since, as they allege, it was the understanding of the parties that North End was to retain title to the machines until Hosmer had paid for them. The agreements between Hosmer and North End, respondents assert, amounted to no more than contracts to sell, and the sales themselves did not take place until the checks, previously delivered by Hosmer to North End, were cashed. Lone has no application to the present situation. The essential problem, therefore, is to determine when the sales transactions were consummated. If they remained executory until North End cashed the checks, then there was no preference in either of the transactions, for North End received adequate consideration for them at that time. If, on the other hand, the sales were complete when North End received the orders and released possession of the machines, the transfers of money resulting from the subsequent cashing of the checks, amounted to payments on an antecedent debt, and must be regarded as preferences. And, as Williston says: In business dealings these words are frequently used when in reality a short period of credit is contemplated. In such a case it is clear that there is no cash sale in the legal sense. Under the circumstances suggested, it is not contemplated that the buyer shall refrain in the meantime from dealing with the goods or even from reselling them, and if such is the contemplation of the parties, it is impossible to say that the property was not to pass until the price was paid. The evidence in the present case indicates that North End parted with possession of the machines and acquiesced in their resale. Hosmer was then informed that this had been done, and it was only then that it, in turn, notified North End that the accounts had been paid, that the funds were available, and that the checks could be presented for payment. It is thus apparent that North End parted with all dominion and control over the machines. Substantially the only evidence tending to show that it retained the title to them consisted of Mr. The trial judge thought so. If it was indeed his purpose to require that he be paid for the machines Oct. The sales having been consummated on December 23rd and December 26th, respectively, North End became a creditor of Hosmer for the obligations in question on those dates. The cashing of checks Nos. Appellent is, therefore, entitled to avoid them. The judgment is reversed and the cause remanded, with instructions to enter judgment for appellant, as prayed for in its complaint. Petition for rehearing denied.

Chapter 2 : Luster Dr, West Chester, OH | Trulia

This Single-Family Home is located at Luster Dr, West Chester, OH. Luster Dr is in West Chester, OH and in ZIP Code Luster Dr has 4 beds, 2 baths, approximately 1, square feet and was built in

On an issue as to whether the work of erecting a building was done on a cost-plus basis, as provided in one contract, or on a fixed-price basis, as provided in another contract executed by the parties and dated the same day, held that the evidence sustains the finding of the trial court that the work done was done on a cost-plus basis. In the absense of waiver of a stipulation in a building contract requiring written consent to extras, the owner cannot be held liable for such extras; however, the owner must pay for extras where it is shown that he permitted and authorized the changes, regardless of the fact that there was no compliance with the provision in the contract requiring his written consent. The owner of a building constructed under a contract requiring his written consent to any extras will be held to have waived that requirement, where it appears that they were made with his knowledge and consent and that he was present in his shop adjoining the building site every day during the process of construction. In an action for money claimed to be due for extra work on a building contract , held that the evidence supports the findings of the trial court that the extra work was actually performed, that it was in accordance with the oral agreements made between the parties during the process of construction, and that the prices charged were reasonable and necessitated by the work done. Appeal from a judgment of the superior court for King county, Lawler, J. In the complaint, it was alleged that shortly prior to April 1, , plaintiffs and defendant P. Luster entered into discussions concerning the construction of a building for the defendants; that an estimate was submitted by plaintiffs; that thereafter the parties entered into a contract which provided, among other things, that plaintiffs should construct a building for the defendants Luster, and be paid therefor on the basis of cost of labor and materials, plus ten per cent for overhead or supervision, and ten per cent for profit. It was also alleged that plaintiffs commenced construction of the building in April, , and thereafter submitted periodic statements to defendants, based upon the cost-plus contract, and that defendants made partial payments based upon the statements presented. The complaint further alleged that, during the progress of the work, defendants made several requests for changes in, and additions to, the original plans, and that such changes and additions were complied with by plaintiffs at a substantial increase in cost with the full knowledge and consent of the defendants. A general description of the changes and additions was set out in the complaint. In addition, there were allegations to the effect that plaintiffs were required to perform extra work and expend additional sums of money because of the failure of defendants to remove certain heavy machinery and a building from the site where the new building was being constructed. Subsequent to the filing of the complaint, the defendants made a motion for a bill of particulars. This bill of particulars set forth the cost of the materials and labor furnished, and also contained computations showing the total amount claimed to be due for each item, including twenty per cent for supervision and profit. In their answer, the defendants denied that the work was done on a cost-plus contract, but asserted that the final contract between the parties was contained in a letter in which plaintiffs submitted an estimate of the cost of the proposed building. They admitted that the plaintiffs furnished certain labor and materials for the construction of the building, but denied that it was done pursuant to the cost-plus contract. They admitted the performance of one item of additional work, but denied the remaining allegations relating to additional work as contained in the complaint and the bill of particulars. The reply put in issue the charges made in the crosscomplaint. The cause was tried to the court. At the conclusion of the trial, findings of fact and conclusions of law were Dec. The assignments of error are: The trial court erred in entering judgment against the Appellants, in favor of the Respondents. Inadequate allowance as an off-set to extras for elimination of north wall of building. The court erred in entering the Conclusions of Law. They are engaged in the business of building heavy sawmill machinery. The building contracted for was an extension of the main plant for use as an assembly room - that is, as machine parts were made in the main plant, they were then to be removed to the new room and assembled into completed machines. The addition consisted of one large room with three exterior walls, a fiat roof and a cement floor about six feet below the level of the floor of the main plant. As

finally constructed, it covered three lots. It was about ninety feet in length on the east side, one hundred fifteen feet on the south side, thirty-eight feet on the west side, and one hundred two feet on the north side. The three remaining sides of the building were approximately twenty feet in height. The floor covered almost sixty-five hundred square feet, and it was constructed of concrete three and one-half inches thick. Prior to the making of the contract, appellants gave respondents certain data as to the kind of a building they wanted to erect, the cost not to exceed ten thousand dollars. In March of , respondents drafted a proposed building contract and submitted it to appellants for their consideration. The proposal provided for the construction of a building on a cost-plus basis - that is, the appellants would be bound to pay the entire cost of the building plus twenty per cent, which would cover the overhead expense or supervision by the contractors and a ten per cent profit. Appellants rejected the proposition at that time and stated that they would consider only a contract which provided for a definite sum bid. April 1, , respondents submitted a written proposal, which provided among other things that, "This proposal includes all labor and materials required in connection with the two buildings, also all engineering, building permits, inspection, etc. The proposal provided that no extras should be added to the price without the written consent of the owner, Mr. This bid was to become a part of the contract and be attached thereto. The parties entered into a written agreement dated April 1, It did, however, refer to the building and provided Dec. The overhead and profit is based only on the actual cost of labor and material. The Owner agrees to make payment on account thereof as follows: Sedille testified that, following the submission of the bid, and prior to the commencement of any work, he learned of certain conditions which were different than he had understood prior to that time. These conditions were that Mr. The witness testified further that there was a house on the premises where they were going to erect the building; that he had been informed that the house would be removed, but he discovered that it was not to be removed immediately, but that there was about a thirty-day period that the occupants of the building had before they were to move off the premises. He said that he told Mr. Luster that, under the conditions just mentioned, it would be impossible to take a lump-sum contract, and, on the strength of that, he prepared the cost-plus contract and delivered it to Mr. Kellum, an employee of appellants, testified that exhibit No. Sedille in March, and that it was left in the office. Appellants refused to sign the contract known as exhibit No. He stated that the cost-plus agreement was the one signed first, and the two agreements were then attached, or stapled, together. Respondents proceeded with the work of erecting the building. May 10, , they sent or delivered to appellants an estimate for "Payment No. June 5, , respondents presented estimate No. The third request for periodical payment was dated July 1, , sheet No. At the bottom of the statement, there was a Dec. The evidence produced during the trial, especially that relative to the furnishing of estimates during the construction which included statements charging twenty per cent for overhead and profit, convinces us, as it did the trial court, that the work of erecting the building for appellants was done on a cost-plus basis. We shall now consider the claims made that the court erred in allowing extras - that is, in allowing compensation for construction work which was not mentioned or shown in the original plans. The record discloses that, during the progress of the building, various changes, additions, and substitutions were made in the structure. Most, if not all, of these changes, additions, or alterations were made without the written consent of the owner, as required by the contract. We have also held that an owner must pay for extras where it is shown that he permitted and authorized the changes, regardless of the fact that there was no compliance with the contract requiring the written consent of the person who had the work done. We hold that appellant P. Luster waived the requirement of written consent contained in the contract and must pay for the cost of labor and materials necessary to make the changes, additions, and alterations. The statement of facts reveals that the facts relative to the changes were very much in dispute. A change required the placing or installation of steel lintels in order to support the building; that a balcony was erected on the building along the University street side, the balcony being eleven or twelve feet wide, and about sixty feet in length. Because of the installation of a toilet in the balcony, the existing sewer line had to be replaced by cast iron pipe; some larger doors had to be put in in the loading dock; also a trolley beam had to be erected over the loading dock, and there were some additional sashes installed due to change in size of windows; a ramp was built to connect the two buildings. They had to remove part of an old wall and put in girders, and make some extra excavation in the alley section. The respondents built a stairway with handrails in the old building, and took a wall down

in order that air might come into the building. Respondents testified to these extras that they were not shown on the original plan; that the amounts paid for materials and labor were proper expenditures in order to make the necessary additions and changes. These individuals were men of long experience in the contracting business. Their evidence evidently appealed to the trial court. On the other hand, appellant P. Luster testified that many of the portions of the building claimed to be extras had been agreed to beforehand; that the prices paid for materials and labor in constructing the claimed extras were not reasonable in view of the work necessary to make the changes. The trial court Dec. He decided, after listening to the testimony, that the extra work was performed as stated by the various witnesses appearing for respondents, and was in accordance with the oral agreements made between the parties during the process of constructing the building; further, that the prices charged were reasonable and necessitated by the work done. Respondents attempted to add to their cost the salary paid to respondent Eggers, the superintendent, in the sum of fifteen hundred dollars. The court refused to allow any amount paid to respondent, who acted as superintendent of the building construction. The court also allowed as damages for faulty construction of the concrete floor the sum of one thousand dollars, and for the elimination of the north wall, the sum of one thousand dollars. Other claims for negligence made by appellants were denied by the trial court. Examination of the record convinces us that the trial court carefully considered all of the evidence introduced relating to all phases of the controversy; further, that he made a proper accounting between the parties, and that his judgment should be affirmed. It is so ordered.

Chapter 3 : P. P., et al v. W Chester Area Sch :: Justia Dockets & Filings

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