Theodore C. Sherwood v. Hiram Walker et al.

Supreme Court of Michigan
66 Mich. 568 (1887)

[This case concerns mutual mistake. Both parties to the contract should have mutually compatible expectations as to what they are bargaining over. What happens when they are both wrong? There was no “meeting of the minds.” Should there be an enforceable contract? If one of the parties to the contract wants the contract enforced, despite the mutual mistake, we can assume that the mutual mistake has resulted in an unexpected redistribution of wealth. Should that unexpected redistribution be enforced by the courts?

Mutual mistake should not be confused with unilateral mistake. With unilateral mistake there is asymmetric information. The rules governing contract enforcement under unilateral mistake can be quite different from those for mutual mistake.

In the present case the defendant purchase a cow that he wants delivered. The plaintiff contracted to purchase a cow. When he went to complete the transaction the defendant refused to accept his money and deliver the cow. At the time they had agreed to the sale they both believed the cow was barren. In the interim the defendant discovered that the cow was with calf. Since a fertile cow sells for significantly more than a barren cow, the defendant did not want to complete the sale at the previously agreed to price.]

JUDGES: Morse, J. Campbell, C.J., and Champlin, J., concurred. Sherwood**,** J. (dissenting).

OPINIONBY: Morse

Replevin [An action for the recovery of a possession that has been wrongfully taken] for a cow.

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The main controversy depends upon the construction of a contract for the sale of the cow.

The plaintiff claims that the title passed, and bases his action upon such claim.

The defendants contend that the contract was executory [all parts of the contract had not been completed], and by its terms no title to the animal was acquired by plaintiff.

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[The]… plaintiff went out to Greenfield and saw the cattle. A few days thereafter, he called upon one of the defendants with the view of purchasing a cow, known as "Rose 2d of Aberlone." After considerable talk, it was agreed that defendants would telephone Sherwood at his home in Plymouth in reference to the price. The second morning after this talk he was called up by telephone, and the terms of the sale were finally agreed upon. He was to pay five and one-half cents per pound, live weight, fifty pounds

shrinkage. He was asked how he intended to take the cow home, and replied that he might ship her from King's cattle-yard. He requested defendants to confirm the sale in writing, which they did by sending him the following letter:

[Letter omitted]

…[T]he plaintiff went to defendants' farm at Greenfield, and presented the order and letter to Graham, who informed him that the defendants had instructed him not to deliver the cow. Soon after, the plaintiff tendered to Hiram Walker**,** one of the defendants, $ 80, and demanded the cow. Walker refused to take the money or deliver the cow. The plaintiff then instituted this suit.

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The defendants then introduced evidence tending to show that at the time of the alleged sale it was believed by both the plaintiff and themselves that the cow was barren and would not breed; that she cost $80, and if not barren would be worth from $750 to $1,000; that after the date of the letter, and the order to Graham, the defendants were informed by said Graham that in his judgment the cow was with calf, and therefore they instructed him not to deliver her to plaintiff, and on the twentieth of May, 1886, telegraphed to the plaintiff what Graham thought about the cow being with calf, and that consequently they could not sell her. ...

…

… The refusal to deliver the cow grew entirely out of the fact that, before the plaintiff called upon Graham for her, they discovered she was not barren, and therefore of greater value than they had sold her for.

…

It appears from the record that both parties supposed this cow was barren and would not breed, and she was sold by the pound for an insignificant sum as compared with her real value if a breeder. She was evidently sold and purchased on the relation of her value for beef, unless the plaintiff had learned of her true condition, and concealed such knowledge from the defendants. Before the plaintiff secured possession of the animal, the defendants learned that she was with calf, and therefore of great value, and undertook to rescind the sale by refusing to deliver her. The question arises whether they had a right to do so.

The circuit judge ruled that this fact did not avoid the sale, and it made no difference whether she was barren or not. I am of the opinion that the court erred in this holding. I know that this is a close question, and the dividing line between the adjudicated cases is not easily discerned. But it must be considered as well settled that a party who has given an apparent consent to a contract of sale may refuse to execute it, or he may avoid it after it has been completed, if the assent was founded, or the contract made, upon the mistake of a material fact,--such as the subject-matter of the sale, the price, or some collateral fact materially inducing the agreement; and this can be done when the mistake is mutual.

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If there is a difference or misapprehension as to the substance of the thing bargained for, if the thing actually delivered or received is different in substance from the thing

bargained for and intended to be sold, then there is no contract; but if it be only a difference in some quality or accident, even though the mistake may have been the actuating motive to the purchaser or seller, or both of them, yet the contract remains binding.

"The difficulty in every case is to determine whether the mistake or misapprehension is as to the substance of the whole contract, going, as it were, to the root of the matter, or only to some point, even though a material point, an error as to which does not affect the substance of the whole consideration." ...

It has been held, in accordance with the principles above stated, that where a horse is bought under the belief that he is sound, and both vendor and vendee honestly believe him to be sound, the purchaser must stand by his bargain, and pay the full price, unless there was a warranty.

It seems to me, however, in the case made by this record, that the mistake or misapprehension of the parties went to the whole substance of the agreement. If the cow was a breeder, she was worth at least $ 750; if barren, she was worth not over $ 80. The parties would not have made the contract of sale except upon the understanding and belief that she was incapable of breeding, and of no use as a cow. It is true she is now the identical animal that they thought her to be when the contract was made; there is no mistake as to the identity of the creature. Yet the mistake was not of the mere quality of the animal, but went to the very nature of the thing. A barren cow is substantially a different creature than a breeding one. There is as much difference between them for all purposes of use as there is between an ox and a cow that is capable of breeding and giving milk. If the mutual mistake had simply related to the fact whether she was with calf or not for one season, then it might have been a good sale; but the mistake affected the character of the animal for all time, and for her present and ultimate use. She was not in fact the animal, or the kind of animal, the defendants intended to sell or the plaintiff to buy. She was not a barren cow, and, if this fact had been known, there would have been no contract. The mistake affected the substance of the whole consideration, and it must be considered that there was no contract to sell or sale of the cow as she actually was. The thing sold and bought had in fact no existence. She was sold as a beef creature would be sold; she is in fact a breeding cow, and a valuable one.

The court should have instructed the jury that if they found that the cow was sold, or contracted to be sold, upon the understanding of both parties that she was barren, and useless for the purpose of breeding, and that in fact she was not barren, but capable of breeding, then the defendants had a right to rescind, and to refuse to deliver, and the verdict should be in their favor.

The judgment of the court below must be reversed, and a new trial granted, with costs of this Court to defendants.

Campbell, C.J., and Champlin, J., concurred.

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DISSENT**:** Sherwood**,** J. (*dissenting*).

I do not concur in the opinion given by my brethren in this case. I think the judgments before the justice and at the circuit were right.

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There is no pretense that there was any fraud or concealment in the case, and an intimation or insinuation that such a thing might have existed on the part of either of the parties would undoubtedly be a greater surprise to them than anything else that has occurred in their dealings or in the case.

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… [It] is held that because it turned out that the plaintiff was more correct in his judgment as to one quality of the cow than the defendants, and a quality, too, which could not by any possibility be positively known at the time by either party to exist, the contract may be annulled by the defendants at their pleasure. I know of no law, and have not been referred to any, which will justify and such holding, and I think the circuit judge was right in his construction of the contract between the parties.

It is claimed that a mutual mistake of a material fact was made by the parties when the contract of sale was made. There was no warranty in the case of the quality of the animal. When a mistaken fact is relied upon as ground for rescinding, such fact must not only exist at the time the contract is made, but must have been known to one or both of the parties. Where there is no warranty, there can be no mistake of fact when no such fact exists, or, if in existence, neither party knew of it, or could know of it; and that is precisely this case. If the owner of a Hambletonian horse had speeded him, and was only able to make him go a mile in three minutes, and should sell him to another, believing that was his greatest speed, for $300, when the purchaser believed he could go much faster, and made the purchase for that sum, and a few days thereafter, under more favorable circumstances, the horse was driven a mile in 2 Minn. 13 sec., and was found to be worth $20,000, I hardly think it would be held, either at law or in equity, by any one, that the seller in such case could rescind the contract. The same legal principles apply in each case.

In this case neither party knew the actual quality and condition of this cow at the time of the sale. … The defendants sold the cow for what they believed her to be, and the plaintiff bought her as he believed she was, after the statements made by the defendants. No conditions whatever were attached to the terms of sale by either party. It was in fact as absolute as it could well be made, and I know of no precedent as authority by which this Court can alter the contract thus made by these parties in writing, and interpolate in it a condition by which, if the *defendants should be mistaken in their belief that the cow was barren*, she should be returned to them, and their contract should be annulled.

It is not the duty of courts to destroy contracts when called upon to enforce them, after they have been legally made. There was no mistake of any such material fact by either of

the parties in the case as would license the vendors to rescind. There was no difference between the parties, nor misapprehension, as to the substance of the thing bargained for, which was a cow supposed to be barren by one party, and believed not to be by the other. As to the quality of the animal, subsequently developed, both parties were equally ignorant, and as to this each party took his chances. If this were not the law, there would be no safety in purchasing this kind of stock.

I entirely agree with my brethren that the right to rescind occurs whenever "the thing actually delivered or received is different in substance from the thing bargained for, and intended to be sold; but if it be only a difference in some quality or accident, even though the misapprehension may have been the actuating motive" of the parties in making the contract, yet it will remain binding. In this case the cow sold was the one delivered. What might or might not happen to her after the sale formed no element in the contract.

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The only pretense for avoiding this contract by the defendants is that they erred in judgment as to the qualities and value of the animal.. …

The judgment should be affirmed.

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Questions

1. The majority finds that a contract is not binding if there is mutual mistake over a material fact. In every contract there are likely to be minor mistakes. How do we distinguish between these minor mistakes and a major mutual mistake that abrogates the contract? Is this really only a question whose answer depends on the absolute size of the unexpected redistribution? Does this decision support efficient contracting?
2. The majority purports that the mistake was mutual, while the minority argues the mistake was actually unilateral. Do the facts support the majority or the minority? Why is the mutuality of the mistake important?
3. Suppose the mistake was unilateral. The plaintiff, who wanted to purchase the cow, noticed that it was with calf, but the defendant thought the cow was barren. Would the enforcement of this contract enhance economic efficiency? Would the goal of efficiency require the abrogation of contracts that embodied unilateral mistake?
4. Is this decision like to affect the willingness of parties to enter into future contracts?