



Redwood Co. v. Jorgensen

528 P.2d 415 (1974) | Cited 0 times | Colorado Court of Appeals | November 6, 1974

Van CISE, Judge.

Redwood Company, Inc., (Redwood) appeals from a judgment after trial to the court dismissing its action for damages for alleged breach of contracts by defendants Rumney and Jorgensen. We affirm.

Rumney was the owner of two Colorado Public Utilities Commission (P.U.C.) private carrier permits which authorized her to conduct operations as a private contract carrier by motor vehicle for hire. On March 12, 1962, Redwood and Rumney executed an "Option Agreement" (Rumney option) granting Redwood a five year option to purchase these two permits for \$30,000 plus annual interest on the unpaid balance of principal. At this time, and prior thereto, Redwood was operating its own trucking business under the name "Rumney Truck Service" and was paying Rumney \$275 and later \$300 monthly out of the Rumney Truck Service bank account for the use of these permits.

On March 12, 1965, Redwood and Jorgensen entered into an "Agreement" (Jorgensen contract) whereby Redwood agreed to sell to Jorgensen its rights under the Rumney option for \$45,000 payable \$25,000 in escrow and the balance in monthly payments over a three year period commencing with the transfer authorization date. Under this agreement, Redwood was obligated to exercise the Rumney option and to have Rumney apply to the P.U.C. for transfer of the permits to Jorgensen; Jorgensen agreed to make the payments as specified above and to apply for transfer of the permits to him; and both Jorgensen and Redwood were to cooperate in obtaining the transfer. If the P.U.C. refused to transfer the permits to Jorgensen, the agreement was to become null and void and the escrowed funds were to be returned to Jorgensen. After the signing of the Jorgensen contract, Redwood discontinued the use of the permits. Jorgensen then used them in his trucking business under the same name, "Rumney Truck Service," paying Rumney the monthly \$300 payments for the use of the permits.

On February 27, 1967, the P.U.C. issued an order to Rumney to show cause why the permits should not be revoked, and on September 12, 1967, it revoked the permits. That revocation was affirmed on appeal. *Rumney v. Public Utilities Commission*, 172 Colo. 314, 472 P.2d 149. After revocation of the permits, on March 8, 1968, Rumney and Jorgensen filed an application with the P.U.C. for transfer of the permits from Rumney to Jorgensen, which application was denied as moot on March 20, 1969.

In 1971, Redwood commenced this action against Rumney and Jorgensen for the \$45,000 purchase price specified in the Jorgensen contract less the payments made direct to Rumney by Jorgensen. The court found that Redwood had failed to perform what it had agreed to do under the contracts and,



Redwood Co. v. Jorgensen

528 P.2d 415 (1974) | Cited 0 times | Colorado Court of Appeals | November 6, 1974

accordingly, dismissed its complaint. The evidence supports this finding.

Redwood contends on appeal that the revocation of the permits by the P.U.C., which made the contracts impossible to perform, was the fault of the defendants and not of Redwood and that it was therefore entitled to the balance of the Jorgensen contract price for the permits. We do not agree. The trial court found, and the evidence supports the finding, that Redwood and Jorgensen conducted operations "in much the same fashion" under their respective operating arrangements for use of the Rumney permits.

Redwood had no obligations under the Rumney option other than to pay interest on the unpaid balance of the option price each year if it desired to preserve the option. Rumney had no obligations other than to cooperate with Redwood in the transfer of the permits to it in the event of an exercise of the option. The option was still in force at the time the Jorgensen contract was entered into, but it was never exercised. Even if we assume that the payments to Rumney by Redwood and then by Jorgensen for the use of the permits should also be credited on the option price, the aggregate amount paid prior to and during the five years does not meet the option price. The option therefore expired at the end of its term, and there is no basis for any judgment against Rumney. See *Dunton Mortgage Co. v. Breymaier*, 136 Colo. 343, 316 P.2d 1048.

Under the Jorgensen contract, both parties had specific duties to perform, and neither performed any of them in time to comply with the contract. Not having performed its own covenants, Redwood is in no position to complain about Jorgensen's failure to do what he agreed to do. See *Young v. Leech*, 78 Colo. 208, 240 P. 692; 17 Am.Jur.2d Contracts §§ 322 and 362.

Judgment affirmed.

RULAND and STERNBERG, JJ., concur.

