Affirmed and Opinion filed October 26, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-99-00536-CV

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STATE PIPE & SUPPLY, INC. D/B/A PANTHER PIPE & SUPPLY, INC., Appellant

V.

TRIDENT STEEL CORPORATION, Appellee

On Appeal from the 165th District Court
Harris County, Texas
Trial Court Cause No. 97-37976

O P I N I O N

This is an appeal from a take nothing judgment entered against appellant, State Pipe & Supply, Inc. d/b/a Panther Pipe & Supply, Inc. ("Panther") on Panther's claim for payment for goods delivered to Trident Steel Corporation. Panther asserts six issues on appeal. We affirm the judgment of the trial court.

Background

Panther is the exclusive distributor of Pusan oilfield tubing in America. Trident is a wholesaler of tubular goods in the oil and gas industry. In January 1997, Trident contacted a supplier, Calibre Pipe & Supply, Inc., to purchase tubing. In connection with this purchase, Trident agreed to pay Calibre cash in advance. Calibre sent two invoices to Trident for this tubing and Trident paid Calibre approximately $640,000.

To obtain the tubing for sale to Trident, Calibre contacted Panther. Panther and Calibre discussed a combination sale/trade, but their negotiations were never reduced to a written agreement. Although the agreement between Trident and Calibre was separate from Calibre's dealings with Panther, the parties all knew that Panther was the supplier of the tubing to Calibre and Trident was the ultimate buyer.

When the tubing was not delivered and Trident was unable to communicate with Calibre, Trident's president, Kevin Beckmann contacted Panther directly and requested a paper transfer of the tubing directly to Trident, thereby bypassing Calibre completely. Beckmann spoke to Joseph Schumacher, President of Panther. A "paper transfer" was defined by Panther as a transfer of title to tubing in a pipe yard without actually moving the goods. Trident took possession of the tubing and Panther sent invoices to Calibre. Calibre refused to pay and eventually filed Chapter 7 bankruptcy. Panther then filed this suit against Trident. Calibre is not a party to this suit.

Sale Without Title

In its first point of error, Panther claims the trial court erred in holding that Panther was entitled to payment only from Calibre based on what Panther calls a "sale without title" theory.

In its conclusions of law, the trial court found that there was no contract between Panther and Trident. The trial court further found that, by making payment of the total invoice price for the tubing, Trident fully performed its obligation under its contract with Calibre. Finally, the court concluded that Panther was entitled to payment from Calibre, but was not entitled to payment from Trident.

Based on these conclusions, Panther claims the trial court's judgment indicates that a sale from Panther to Calibre and from Calibre to Trident was actually performed. Because Panther did not actually deliver the tubing to Calibre, and Calibre did not actually deliver the tubing to Trident, Panther claims there

is no evidentiary or statutory support for the judgment. Because the delivery of the tubing and payment did not occur as contemplated in the original agreements between the parties, Panther claims that title could not have passed from Calibre to Trident. Thus, Panther reasons that any sale found by the trial court was a "sale without title." Panther admits that no authority prohibits a buyer from shipping goods directly to a customer, but Panther argues this authority is irrelevant because Calibre was never a buyer.

Conclusions of law will be upheld on appeal if the judgment can be sustained on any legal theory supported by the evidence. *See Johnston v. McKinney American, Inc.*, 9 S.W.3d 271, 277 (Tex. App.–Houston [14th Dist.] 1999, pet. denied); *Spiller v. Spiller*, 901 S.W.2d 553, 556 (Tex. App.--San Antonio 1995, writ denied). Conclusions of law will not be reversed, unless they are erroneous as a matter of law. *See Hitzelberger v. Samedan Oil Corp.*, 948 S.W.2d 497, 503 (Tex. App.–Waco 1997, pet. denied). In addition, a trial court's conclusions of law are reviewed de novo as legal questions. *See id*. Incorrect conclusions of law will not require a reversal, however, if the controlling finding of facts will support a correct legal theory. *See id*.

The record shows that Panther, who had title to the goods, delivered the goods to Trident, with knowledge that Trident had already paid Calibre for the goods. The obligation of a seller is to transfer and deliver and the obligation of a buyer is to accept and pay in accordance with the contract. TEX. BUS. & COM. CODE ANN. § 2.301 (Vernon 1994). Panther did not fulfill its obligation to Calibre to deliver the pipe to Calibre. Instead, it voluntarily transferred the goods to Calibre's purchaser, without a reservation of title or a demand for payment from Trident.

As a general rule, a vendor can convey no greater right or title than he has. *See Luse v. Crispin Co.*, 344 S.W.2d 926, 931 (Tex. Civ. App.–Houston 1961, writ ref'd n.r.e.). This general rule, however, contemplates a simple transfer from one party to another where no other element intervenes. *See id*. The instant case was not a simple transfer from one party to another, but involved a contract for a sale to one party and a subsequent sale from that party to another party. Although Panther argues at length regarding its "sale without title" theory, with citations to sections of the Uniform Commercial Code ("UCC"), disposition of this case was not expressly based on the UCC and the facts of this case are not neatly

decided by application of the UCC. Instead, case law presented to the trial court offers another basis for the trial court's judgment.

In *Luse v. Crispin Co.*, Crispin agreed to sell pipe to Transcontinental Oil Company, who was to sell the pipe to Luse. *See id.* at 927. Crispin knew that Transcontinental intended to resell the pipe to Luse. *See id.* Luse, however, did not know that the pipe originated with Crispin. *See id.* at 928. Crispin shipped the pipe to Union City Transfer Company, the location requested by Luse, under an open bill of lading, with no reservation of title and no requirement of payment on delivery. *See id.* at 928, 930. Luse paid Transcontinental for the pipe, but Transcontinental did not in turn pay Crispin. *See id.* at 929. The transfer company, which held the pipe in its yard, brought an interpleader action against Luse and Crispin. *See id.* at 927. Although Luse lost in the trial court, the appellate court reversed and rendered judgment for Luse, finding that, under the circumstances, the parties contemplated that the sale was to be completed when the pipe was delivered, and title would pass to Luse upon his purchase of the pipe from Transcontinental. *See id.* at 931.

In reaching this conclusion, the court considered the following facts: (1) Crispin knew the pipe was shipped to effectuate a sale by Transcontinental to Luse; (2) payment was to be made by Luse directly to Transcontinental; and (3) Crispin shipped the pipe by open bill of lading without retaining title and without requiring payment on delivery. *See id.* 930-31. These facts convinced the court there was no evidence Crispin did not intend for title to pass. *See id.* The court concluded this was "not a case of mere delivery of the pipe but delivery coupled with the indicia of title commonly relied upon by business men in their dealings, coupled with Crispin's knowledge that the pipe was being sold to Luse." *Id.* at 931. The court further supported its holding on the following equitable ground:

> Even if Crispin had the right to avoid the sale insofar as Transcontinental is concerned, a matter upon which we need not pass, it did not have such right after Luse in good faith had bought the pipe from Transcontinental and paid for it in full. If Crispin did not give to Transcontinental through the open bills of lading, through delivery to the carrier, and through delivery to the storage yard for Luse's account, title to the property, it passed to Transcontinental the unquestionable indicia of title and apparent ownership, so that in any event Luse Obtained [sic] title by virtue of an estoppel.
>
> Moreover, the law is well settled that Luse and Crispin, being equally entitled to consideration, if one of the parties must suffer loss for the failure of Transcontinental to pay

> Crispin for the pipe, the loss should fall upon Crispin *which had full knowledge of the transaction and the means of protecting itself* by the simple expedient of transporting the pipe under a shipper's order bill of lading or stipulating on the bill that delivery was to be made only upon condition of prior or concurrent payment of the purchase price.

Id. at 932 (emphasis added).

Although the facts in *Luse* are slightly different, we find *Luse* sufficiently analogous to support the trial court's judgment in the instant case. Panther was to deliver tubing to Calibre and obtain payment from Calibre. The record does not show that Panther's oral agreement required cash on delivery. Panther knew that the tubing was for eventual sale to Trident.

Trident, on the other hand, contracted with Calibre to purchase the tubing and agreed to pay Calibre in advance. Trident knew that Calibre was to obtain the tubing from Panther. Trident paid the agreed price in advance to Calibre. After paying for the tubing and experiencing difficulty in communicating with Calibre, Trident contacted Panther directly, asking Panther to paper transfer the tubing directly to Trident. Panther agreed to do so, with knowledge that Trident had already paid Calibre for the tubing. When Panther paper transferred the tubing to Trident, Panther neither placed any conditions upon the transfer nor demanded payment before the transfer.

Panther attempts to distinguish *Luse* on the ground that the buyer in *Luse* used a bill of lading to pass title from the seller to the buyer and then to the buyer's customer.[1] The facts in *Luse*, however, show that Crispin knew the pipe was for eventual sale to Luse and that Luse had requested delivery to the storage yard. *See id.* The appellate court focused on Crispin's knowledge and its ability to protect itself, not on the language in the bills of lading. *See id.* at 932. Because the language in the bills of lading was not relevant to the court's holding, we do not find it to be a distinction that prevents application of *Luse* to the facts of this case.

[1] The bills of lading in *Luse* read, "Consigned to Transcontinental Oil Company % C.P. Luce [sic] % Union City Transfer Company, destination Beaumont, Texas." 344 S.W.2d at 928.

Panther knew that the tubing was to be sold to Calibre for eventual sale to Trident and the paper transfer was to effectuate this sale. As Panther states in its brief, "Title could be transferred to a buyer by a document of title, *such as a paper transfer . . . .*" The paper transfer to Trident in this case had the indicia of title, coupled with Panther's knowledge that the tubing was being sold to Trident. Panther could have refused to transfer the pipe to Trident because it had no agreement with Trident. Panther could have insisted upon delivery to Calibre, rather than delivery to Trident. Panther could have demanded payment from Trident prior to transfer or could have made the transfer conditional upon payment from Trident. Panther's failure to choose any of these courses of action indicates that Panther intended to obtain payment from Calibre and intended Trident to obtain title to the tubing. Nothing Panther actually did, until it filed suit, indicated that Panther intended to retain title or that Panther expected payment from Trident. We do not interpret the trial court's conclusions of law to determine that a sale without title occurred. Instead, we interpret the trial court's conclusions to hold that title passed when Panther, knowing all of the facts about the transaction, voluntarily paper transferred the tubing to Trident. Because the trial court's conclusion that Trident is not indebted to Panther may be upheld on any legal theory supported by the evidence, we find no error in the conclusion that Panther was entitled to payment only from Calibre.

Transfer To Trident Constituted A Sale

In its second point, Panther argues that the transfer of tubing to Trident was a sale of goods for which Panther should be paid. More specifically, Panther argues that the agreement to transfer the tubing to Trident directly constituted an offer to sell the tubing to Trident, to which Panther orally agreed, and which Panther performed by delivery.

Panther attempts to transform the communications between Panther and Trident into an offer, acceptance, and performance by Panther, but the facts do not support this argument. The letter from Kevin Beckmann of Trident to Joe Schumacher of Panther references an earlier telephone conversation, and states:

> I will have a conversation with Mr. Barry Ellis [of Calibre] advising him of our discussion. I will want to attempt to take him out of the "loop". I find it is far better if you and I discuss matters on a direct basis, to minimize confusion and clarify my needs relative to this transaction. As you and I discussed this morning, I was not operating with all of the

> information that was available to you from Barry. *I can not afford a lack of information any more than you can, not with standing* [sic], *the total dollar amount of monies that I have expensed to date for all of this material.* [emphasis added]

Nowhere in this letter is there any language indicating an offer to purchase or a discussion of any payment terms. Although the Business and Commerce Code provides for offer and acceptance in the formation of a contract, a contract will be formed only if the language or circumstances unambiguously indicate otherwise. *See* TEX. BUS. & COM. CODE ANN. § 2.206(a) (Vernon 1994). The letter does not offer to purchase, it asks for a paper transfer of certain tubing. The letter mentions Trident's prior expenditure of money for this tubing, referencing the payment made to Calibre, and the letter does not mention any additional payment to be made by Trident to Panther. Thus, this letter does not constitute an offer to purchase. Additionally, Joseph Schumacher, the President of Panther, testified that he never mentioned to Kevin Beckmann of Trident, that Panther expected payment from Trident when the tubing was transferred.

Panther nevertheless claims Trident still must pay for the goods it requested and received and that, even if the communications did not mention payment, this omission may be implied by the basic truism that a buyer pays for goods. This argument overlooks the fact that Trident had already paid for the goods and Panther agreed to paper transfer the goods to Trident with full knowledge of Trident's prior payment to Calibre.

Although Panther claims there is no statutory authority for Trident's acceptance of the goods and refusal to pay Panther, this is not a typical transaction contemplated by statute. Had Panther contemplated payment from Trident, it could have made the transfer conditional upon payment from Trident or it could have refused to paper transfer the goods to Trident. By Panther's actions, it is clear that Panther contemplated receiving payment from Calibre, not from Trident. Accordingly, we find no error in the trial court's conclusion that Panther is not entitled to payment from Trident.

Failure To Make Findings Of Fact And Conclusions Of Law On Ultimate Issue

Panther next argues the trial court refused to make findings of fact and conclusions of law on the controlling issue of sale of goods. Panther made two requests for additional findings and conclusions, but the trial court did not comply with these requests. Panther asserts that the trial court's findings and conclusions do not explain how Trident obtained ownership of the tubing.

Rule 298 requires a trial court to file additional findings and conclusions "that are appropriate." TEX. R. CIV. P. 298. Additional findings and conclusions are not required if they do not relate to the ultimate or controlling issues before the court or if they conflict with the original findings and conclusions made and filed by the trial judge. *See Hunter v. NCNB Nat'l Bank*, 857 S.W.2d 722, 727 (Tex. App.–Houston [14th Dist.] 1993, writ denied).

Although the trial court's findings and conclusions do not specifically mention a sale, we do not find that the failure to make additional findings and conclusions is reversible error. If a trial court's refusal to make additional findings of fact and conclusions of law does not prevent an adequate presentation on appeal, there is no reversible error. *See ASAI v. Vanco Insulation Abatement, Inc.*, 932 S.W.2d 118, 122 (Tex. App.–El Paso 1996, no writ); *Tamez v. Tamez*, 822 S.W.2d 688, 693 (Tex. App.–Corpus Christi 1991, writ denied). Panther has not established that the refusal to file additional findings and conclusions prevented an adequate presentation on appeal. Accordingly, we overrule point of error three.

Sufficiency Of The Evidence

Panther's fourth and fifth issues challenge the legal and factual sufficiency of the evidence showing that Panther performed a contract to sell goods to Calibre. This argument arises from the trial court's findings of fact in which it stated that Panther performed in accordance with its contract with Calibre.

Panther claims this conclusion of law makes no sense because Panther did not deliver the tubing to Calibre. Panther admits it transferred title directly to Trident, even though Panther's agreement was to deliver the tubing to Calibre for sale to Trident. We interpret the trial court's conclusion to be based on Panther's awareness that Trident was the ultimate purchaser. Therefore, the court concluded that Panther performed its obligation to Calibre to deliver the tubing. Certainly, the evidence shows that Panther had negotiated with Calibre to deliver a specific amount of tubing in return for payment or some type of trade.

Because the record also shows that Panther was aware of the identity of the eventual purchaser of the tubing from Calibre, we find that the evidence supports the trial court's conclusion. We overrule points of error four and five.

Equitable Grounds

Alternatively, Panther contends the trial court erred in concluding that Panther was not entitled to recover from Trident based on quasi-contract or quantum valebant. Quantum valebant is a common law action of assumpsit for goods sold and delivered, founded on the implied promise to pay what the goods are worth. *See* BLACK'S LAW DICTIONARY 1244 (6th Ed. 1990). Similar to quantum meruit, it concerns an implied promise to pay for the reasonable market value of goods delivered to the buyer. *See Knebel v. Capital Nat'l Bank*, 505 S.W.2d 628, 631 (Tex. Civ. App. 1974), *rev'd on other grounds*, 518 S.W.2d 795 (Tex. 1974).

Despite the lack of a contract between Panther and Trident, quantum valebant does not apply here. Although Panther is entitled to payment for the goods delivered, it is not entitled to payment from Trident. There can be no implied promise from Trident to pay Panther given Panther's agreement with Calibre under which Calibre was obligated to pay for the goods, and given Panther's knowledge that Trident had already paid for the goods.

Panther also cites authority for the equitable principle that where one of two parties to a transaction must suffer by the wrongdoing of a third person, the one who trusted the wrongdoer must bear the loss. *See West v. First Baptist Church of Taft*, 123 Tex. 388, 71 S.W.2d 1090, 1100 (Tex. 1934); *Arnold Kamen & Co. v. Young*, 466 S.W.2d 381 (Tex. Civ. App.–Dallas 1971, writ ref'd n.r.e.). Because Panther claims it did not trust Calibre, and Trident did, as evidenced by its payment to Calibre, Panther asserts that equity requires Trident to bear the loss of the money it gave Calibre.

A review of the facts of this case, however, compels the opposite conclusion. Panther was the party that trusted Calibre would eventually pay, and in reliance on that trust, delivered the tubing to Trident without requiring cash on delivery or reserving title until payment. The record clearly shows that Panther expected to receive payment from Calibre because, after transferring the goods to Trident, Panther invoiced Calibre. Because Panther was aware that Trident had paid Calibre for the goods and that it was

transferring title to Trident without securing payment, we cannot say that Panther was ignorant and innocent in this transaction. We hold that the equitable principle of estoppel does not apply to defeat the judgment in this case. *See Arnold D. Kamen & Co.*, 466 S.W.2d at 389.

Panther also cites *Jarbe Oil Co. v. Birdwell & Son Drilling Co.*, 335 S.W.2d 394 (Tex. Civ. App.–Eastland 1960, writ ref'd n.r.e.) and *Luse v. Crispin Co.*, 344 S.W.2d 926 (Tex. Civ. App.–Houston 1961, writ ref'd n.r.e.), for the equitable doctrine that, where one of two innocent persons must suffer for a third party's wrongful act, the one who gave the power to do the wrong must bear the consequences. As discussed earlier in this opinion, we find that, rather than supporting Panther's position, this equitable doctrine supports the judgment. *Luse* holds that the one who should bear the consequences is the one who had full knowledge of the transaction and had the means of protecting itself by conditioning delivery of the goods or by requiring concurrent payment. *See* 344 S.W.2d at 932.[2] Panther had full knowledge of the transaction and could have protected itself by requiring payment on delivery or by reserving title. Based on the facts of this case, we find no equitable basis for defeating the judgment.

Conclusion

Having found no reversible error, we affirm the trial court's judgment.

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[2] *Jarbe* also supports the trial court's disposition, even though the facts in *Jarbe* are less analogous than those *Luse*. In *Jarbe*, a party purchased three 150-barrel tanks from Irish Drilling Company. 335 S.W.2d at 395. Unbeknownst to the puchaser, the seller had agreed to act as the agent of Jarbe Oil Company, who owned a 7/8th interest in these tanks. *See id.* After Irish Drilling sold the tanks to the innocent purchaser, it became insolvent. *See id.* at 396. On appeal, Jarbe argued that this was a "struggle between two innocent parties over a loss resulting from the insolvency of a third party," and that the purchaser should bear the consequences of the wrongful act of Irish Drilling. *See id.* The appellate court disagreed, finding that Jarbe knew or should have known that Irish Drilling was placing the tanks in its yard for sale to persons who would have no notice of Jarbe's interest. *See id.* Because Jarbe took no steps to apprise the buying public of Jarbe's interest, the court held that Jarbe was estopped to assert any title to the property. *See id.*

Just as Jarbe knew that its agent was holding out tanks for sale to the public without notice of Jarbe's interest in the tanks, Panther knew that Trident had already paid Calibre for the tubing. Just as Jarbe could have taken steps to advise the public of its interest, Panther could have taken steps to protect its interest by demanding cash on delivery or by reserving title or an interest in the tubing.

/s/ Leslie Brock Yates
Justice

Judgment rendered and Opinion filed October 26, 2000.

Panel consists of Justices Yates, Fowler and Edelman.

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