

FREDERICKTOWN MILLING COMPANY v. RIDER.

Opinion delivered April 15, 1929.

1. PARTNERSHIP—ESTOPPEL TO DENY.—One who holds herself out either as owner of a business or as member of a firm will be estopped from showing that she is not such owner or partner, not only as to those to whom the representation was directly made, but as to all others who had knowledge of such representation and in reliance thereon sold goods to the business, provided they exercised due diligence in ascertaining the facts.
2. PARTNERSHIP—EVIDENCE.—In a suit to hold defendant liable for a carload of flour sold the firm of which she admitted in financial statements that she was a partner, testimony of plaintiff's salesman that he was told by the vice president of a bank that she was a member of the firm was admissible to show diligence in making inquiry, and it was immaterial that the vice president was dead at the time of the trial.

3. PARTNERSHIP—EVIDENCE.—In a suit to recover a balance due on a car of flour, where undisputed testimony showed that the amount sued for was due, that defendant had represented herself to be a partner in the purchasing firm, and that plaintiff made diligent inquiry about the matter and sold the flour in reliance on the representations of defendant that she was a partner, *held* that a verdict for defendant was without substantial evidence to sustain it.

Appeal from Phillips Circuit Court; *W. D. Davenport*, Judge; reversed.

STATEMENT OF FACTS.

Appellant company brought this suit against appellee for balance due on a carload of flour alleged to have been sold and delivered to her, doing business under the firm name of the Southern Produce Company, in 1925.

Appellee denied any indebtedness, denied having purchased the goods charged for in the account, and that same were bought by any one else for her account or use.

It appears from the testimony that the flour was sold and delivered to the Southern Produce Company at Helena, Arkansas, and that the amount of the purchase price sued for was unpaid. It was shown that a financial statement of this company was made to A. S. Barboro & Company, in which it is recited that the business will be owned by Mrs. R. M. Rider and managed by R. M. Rider, both of Helena, Arkansas, and reference was given to several of the banks and firms at Helena; and it also recited: "This statement is made for the purpose of establishing a safe and reliable basis of credit." It was signed by "Mrs. R. M. Rider" and "R. M. Rider, manager." A statement was sent to the Morris Packing Company, reciting: "This is a true statement of our worth. Our business will be owned by Mrs. and Mr. R. M. Rider, managed by R. M. Rider. (Signed) R. M. Rider, Mrs. R. M. Rider."

It was also shown by H. Wadsworth, cashier of the First National Bank of Helena, that he had requested a statement from the Southern Produce Company for his bank, and that it was brought into the bank and deliv-

ered to him. This statement, which he exhibited to the jury, recites: "This business is owned by Mrs. Rider, managed by R. M. Rider," and the statement was signed by Mrs. R. M. Rider and R. M. Rider. That Mrs. Rider's signature was known to him, and that it was her signature on the statement.

The deposition of S. H. Crow, taken on interrogatories, was read. He stated he was a traveling salesman for appellant company, and, as such, sold flour to the Southern Produce Company; sold them the carload of flour, but, before doing so, inquired of the First National Bank of Helena, S. S. Faulkner, vice president, about the rating and ownership of the Southern Produce Company, and was told that Mrs. Rider was a partner in the business, and her financial rating would make its credit good. This statement was stricken out, over appellant's objection.

Mrs. Rider testified she did not know she was a partner in the business, but admitted signing the three credit statements, saying she had done so without reading them.

The court instructed the jury, striking out of appellant's requested instruction No. 3 the words, "used due diligence, investigated the situation," and refused to give its requested instructions Nos. 4 and 5, and from the judgment in appellee's favor this appeal is prosecuted.

*A. D. Whitehead and Brewer & Cracraft*, for appellant.

*W. G. Dinning*, for appellee.

KIRBY, J., (after stating the facts). Appellant insists that the court erred in striking out the testimony of its salesman of the information received about the ownership of the Southern Produce Company, upon inquiry from the First National Bank of Helena, and also that the undisputed testimony entitled it to a judgment for the amount of its claim.

In *Herman Kahn Co. v. Bowden*, 80 Ark. 30, 96 S. W. 129, 10 Ann. Cas. 132, this court said:

“A person who holds himself out as a partner of a firm is estopped to deny such representation, not only as to those as to whom the representation was directly made, but as to all others who had knowledge of such holding out, and in reliance thereon sold goods to the firm, provided they exercised due diligence in ascertaining the facts. The cases go even further, and hold that, if one has knowledge that he is being held out to the world as a partner, and fails to contradict the report, he may become liable to those crediting the firm on that account. *Campbell v. Hastings*, 29 Ark. 513; *Fletcher v. Pullen*, 70 Md. 205, 14 Am. St. Rep. 355. It follows therefore, for much stronger reasons, that, if the party himself puts out the report that he is a partner, he will be liable to all those selling goods to the firm on the faith and credit of such report.”

The undisputed testimony shows, and appellee admits, that she signed the financial statements, reciting in one of them that she was the owner of the Southern Produce Company and in the other two that it was owned by herself and R. M. Rider; and, although it is true that she stated this was done without reading the statements and to help her husband in the business, it necessarily was a report put out by her that she was a partner in the business or owner of it, making her liable as such to those selling goods to the firm on the faith and credit of the report. These statements, it is true, were not made directly to appellant company, but it had knowledge thereof, of appellee's holding herself out as a partner of the firm, and the salesman of appellant company stated that the goods were sold to appellee's firm or company in reliance thereon, after he had made inquiry of the First National Bank about the rating and ownership of the Southern Produce Company, and upon being told by its vice president, Mr. Faulkner, now deceased, that appellee, Mrs. R. M. Rider, was a partner in the company, and that it was a responsible concern. The court erred in striking out this testimony. Appellant had the

right to show such inquiry made in ascertainment of the facts and the exercise of diligence in the matter; and, since he inquired of the bank and was given the information furnished by appellee, it could make no difference that the vice president of the bank, who supplied the information, had since died.

Instruction No. 3 was correct as requested, including the words stricken out by the court, but it was more favorable to appellant, as given, than it was entitled to, and could not have had any prejudicial effect, but for the erroneous rejection of the testimony relating to the inquiry made at the bank.

Instruction No. 4 should also have been given. The undisputed testimony shows that the amount sued for was the correct balance due for the flour sold, and the testimony is virtually undisputed that appellee put out the report that she was a partner in the Southern Produce Company; that plaintiff made diligent inquiry about the matter, and sold the goods to that company in reliance upon the representations contained in the report. Such being the case, the verdict was without substantial evidence to support it, and the judgment must be reversed, and the cause remanded for a new trial. It is so ordered.

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