

2000

Max J. Bishop; Richard L. Warner; Harold H. Holley; Richard J. Price and Max N. Lunt, Trustees of the Utah Automobile Dealers Association Group Insurance Plan v. J. E. Crofts & Sons, A Utah Corporation : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

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MAX J. BISHOP; RICHARD L. WARNER;
HAROLD H. HOLLEY; RICHARD J. PRICE
and MAX N. LUNT, Trustees of the
UTAH AUTOMOBILE DEALERS ASSOCIATION
GROUP INSURANCE PLAN,

Plaintiffs,

vs.

J. E. CROFTS & SONS, A Utah
Corporation,

Defendant-Appellant,

vs.

KAIBAB INDUSTRIES, A Utah
Corporation,

Defendant-Respondent.

BRIEF OF RESPONDENT
KAIBAB INDUSTRIES

APPEAL FROM THE JUDGMENT OF THE SIXTH JUDICIAL DISTRICT
COURT OF GARFIELD COUNTY, MAURICE HARDING, DISTRICT JUDGE,
PRESIDING

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IN THE SUPREME COURT OF THE STATE OF UTAH

MAX J. BISHOP; RICHARD L. WARNER;
HAROLD H. HOLLEY; RICHARD J. PRICE
and MAX N. LUNT, Trustees of the
UTAH AUTOMOBILE DEALERS ASSOCIATION
GROUP INSURANCE PLAN,

Plaintiffs,

vs.

J. E. CROFTS & SONS, A Utah
Corporation,

Defendant-Appellant,

vs.

KAIBAB INDUSTRIES, A Utah
Corporation,

Defendant-Respondent.

CASE NO.
13957

BRIEF OF RESPONDENT
KAIBAB INDUSTRIES

STATEMENT OF THE NATURE OF THE CASE

Plaintiffs, as Trustees of a group insurance plan, filed this action interpleading a \$10,075.55 fund which was created through refunds and dividends from insurance premium payments by both Defendants. During the time the fund accumulated, Defendant-Respondent, Kaibab Industries, Inc., paid \$89,729.27 (92.2%) of the premiums and Defendant-Appellant, J. E. Crofts & Sons, paid \$7,571.31 (7.8%) of the premium payments which were made to the Trustees on account of the respective employees of each Defendant. Later, Defendant-Respondent, Kaibab Industries, Inc., terminated its participation in the insurance plan and requested distribution of a pro-rata share of the fund. Defendant-Appellant, J. E. Crofts & Sons, objected making claim to the entire fund, and Plaintiff Trustees asked the Court to determine proper distribution.

DISPOSITION IN THE LOWER COURT

Both Defendants filed Motions for Summary Judgment. The Court adopted the theory of a constructive trust awarding Defendant-Respondent, Kaibab Industries, Inc., 92.2% of the fund (\$9,289.66) and awarding Defendant-Appellant, J. E. Crofts & Sons, 7.8% of the fund (\$785.89).

RELIEF SOUGHT ON APPEAL

Defendant-Respondent, Kaibab Industries, Inc., seeks affirmance of the proportionate awards to each Defendant allocable to their participation in the fund.

STATEMENT OF FACTS

For many years, the Trustees of the Utah Automobile Dealers Association Group Insurance Plan, Plaintiff herein, have operated an insurance brokerage providing group insurance plans for the use and benefit of employees of its members and subscribers. Prior to December, 1964, the Plaintiff Trustees maintained certain trust reserve accounts and equity accounts under the name of "Pearson & Crofts". One of said accounts designated as Pearsons No. 2 resulted from payment of group insurance premiums on employees at a sawmill and logging operation located at Panguitch, Utah, operated jointly by the Pearson family and the Crofts family. (R. 44, 56) On December 30, 1963, this business entity was incorporated as "Crofts-Pearson Industries". Alfred H. Crofts, Leo H. Crofts, John M. Crofts and Jay H. Crofts each owned 1,500 shares of stock and the Pearsons owned an equal number of shares therein. (R. 123) The corporate Defendant, J. E. Crofts & Sons, was not at any time an owner of or shareholder in the corporation, Croft-Pearson Industries. The name of the corporation,

Crofts-Pearson Industries, Inc., was changed to Kaibab-Crofts Industries by an amendment to the Articles of Incorporation on August 26, 1965. The name of the corporation, Kaibab-Crofts Industries, was changed to Kaibab Industries pursuant to Articles and Certificate of Consolidation on October 16, 1968. By virtue of the issuance of said Certificates, Kaibab Industries is the successor in interest of Crofts-Pearson Industries, Inc. (R. 88, 123)

From and after July, 1965, the sawmill and logging employees at Panguitch were on the payroll, employees of and employed by Kaibab Industries and its predecessors and were not at any time after said date on the payroll, employees of or employed by J. E. Crofts & Sons, a corporation, or its individual shareholders. Each and all of the group insurance premium payments for said employees were made by and charged to the bank accounts of Kaibab-Crofts Industries and Kaibab Industries. During the same period, J. E. Crofts & Sons made similar premium payments in behalf of a few persons which it employed. (R. 87, 88)

The Trustees' equity account, Pearsons No. 2, pertaining to the employees of the Panguitch business entity continued under that designation until March of 1967, at which time the respective interests of the Pearsons and the Crofts therein were resolved by agreement. Thereafter, although Kaibab Industries was already participating in the fund, the

Trustees designated the account J. E. Crofts & Sons. (R. 44-45, 56-58) During this period of time, 1965, 1966, and early 1967, the Panguitch company, Kaibab and its predecessors, was receiving and paying separate monthly statements from the Trustees. From March, 1967, to September, 1968, Kaibab received statements under the designation J. E. Crofts & Sons. From September, 1968, to February, 1969, when Kaibab Industries terminated its participation in the fund, billings were received under the designation of Kaibab Industries. (R. 35-37, 42-46)

Following the settlement with Pearsons in March, 1967, it was determined that J. E. Crofts & Sons' balance in the equity account as of April 30, 1964, was \$4,863.83. However, the Trustees paid dividends to J. E. Crofts & Sons in 1966 and 1967 totalling \$4,851.72, an amount almost identical to the original equity account balance. (Letter Exhibit.) As a result, the interpleaded equity account balance of \$10,087.66 has been virtually all generated by the group insurance premiums made by each of the Defendants on account of their respective employees during the period May 1, 1965, to April 30, 1969.

Exhibit No. 6 (R. 90-91) is a document of account itemizing Kaibab Industries' premium payments to the Plaintiff Trustees. In calendar 1965, Kaibab made five premium payments directly to Trustees totalling \$9,635.25. During the calendar

years 1966, 1967 and part of 1968, Kaibab remitted 35 premium payments to the Trustees via J. E. Crofts & Sons totalling \$69,527.77 and from September, 1968, to February, 1969, Kaibab remitted payments directly to the Trustees totalling \$10,566.25. During this same period, J. E. Crofts & Sons paid \$7,571.31 of premiums. After deducting the original equity account balance, the combined premiums generated total funds of \$10,075.55. (R. 90-91, Letter Exhibit)

In soliciting Kaibab Industries' insurance business, billing for and collecting premiums, and insuring its employees, both the Trustees and J. E. Crofts & Sons invited, sanctioned and ratified Kaibab Industries as a participant in the Group Insurance Plan. (Trust Agreement Exhibit, Article III, §2; Article V, §2) When Kaibab Industries terminated its participation in the plan and requested a pro rata share of the equity account trust fund, J. E. Crofts & Sons objected and claimed the entire fund. The Trustees then took the position that it was up to the participants to agree on a division of the fund before distribution would be made. (R. 46, 58) The participants could not agree and the Trustees interpleaded the fund.

Hereafter, the Defendant-Appellant, J. E. Crofts & Sons, will be referred to as "J. E. CROFTS" and the Defendant-Respondent, Kaibab Industries, will be referred to as "KAIBAB".

POINT I

THE LOWER COURT'S JUDGMENT CREATING A CONSTRUCTIVE TRUST AND AWARDING A PROPORTIONATE SHARE OF THE INTERPLEADED FUND TO EACH PARTY WAS PROPER AND SHOULD BE AFFIRMED.

Should equity and good conscience permit J. E. Crofts to take the entire trust fund or should it and Kaibab each receive a proportionate share to prevent injustice and unjust enrichment?

In response to that query, a brief comparison of the insurance fund activities of each firm during the 1965-1969 time frame draws the main issue into sharp focus. During this period, J. E. Crofts, although not an insurance broker, solicited, collected and remitted to the Trustees 35 insurance premium payments by Kaibab totalling \$69,527.77. (R. 90-91) In the same period J. E. Crofts made similar premium payments totalling only \$7,571.31. In 1966-1967, J. E. Crofts received and retained dividends amounting to \$4,871.52. (Letter Exhibit) Based on this activity and its status as a member of the Automobile Dealers Association, it claims the whole trust fund balance of \$10,075.55. Kaibab in 1965 paid \$9,635.25 directly to the Trustees in 5 premium payments. Then from 1966 into 1968 paid \$69,527.77 via J. E. Crofts. In 1968-1969, Kaibab received and paid direct billings amounting to \$10,566.25. Total premium payments by Kaibab \$89,729.27. (R. 90-91) Of all premium payments in relation to the trust account Kaibab paid 92.2% and J. E. Crofts paid the balance of 7.8%.

In view of these facts, the lower court's findings and judgment (R. 134) adopting a constructive trust for the fund, are like the sower's seeds which fell upon good ground, that is, the prevention of unjust enrichment. In Corpus Juris Secundum, Trusts, the basis and elements of constructive trusts are described:

"A constructive trust is a creature of equity, defined supra §15 as a remedial device by which the holder of legal title is held to be a trustee for the benefit of another, who in good conscience is entitled to the beneficial interest... A constructive trust lacks the attributes of a true trust, that is, it has none of the elements of an express trust and is not a fiduciary relationship, but it is a fiction imposed as an equitable device for achieving justice." 89 CJS Trusts §139, p. 1015.

"Generally, any transaction may be the basis for creating a constructive trust where for any reason Defendant holds funds which in equity and good conscience should be possessed by Plaintiff. The forms and varieties of constructive trusts are practically without limit, such trusts being raised, broadly speaking, whenever necessary to prevent injustice." 89 CJS Trusts §142, p. 1027.

Appellant argues that the existence of fraud and deception is a mandatory prerequisite to the adoption of a constructive trust.

"But the impact of the constructive trust is not limited to circumstances comprised within the term fraud:

'A constructive trust is the formula through which the conscience of equity finds expression. When property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest, equity converts him into a trustee.'

'A court of equity in decreeing a constructive trust is bound by no unyielding formula. The

equity of the transaction must shape the measure of relief.'

'A constructive trust arises where a person who holds title to property is subject to an equitable duty to convey it to another on the ground that he would be unjustly enriched if he were permitted to retain it.'

Cases on the LAW OF TRUSTS, George G. Bogert and Dallin H. Oaks (1967), p. 318.

The Utah Supreme Court has adopted this concept in a number of cases, creating a constructive trust if warranted by the facts or denying the same depending on the circumstances.

In Haws, et al vs. Jensen, 209 P. 2d 229, 116 Utah 212, an action was brought to impress a trust upon certain real property. The Court reviewed the law of constructive trusts at pages 216 and 217 quoting with approval from the Restatement of the Law of Trusts and Bogert on Trusts and Trustees:

"Admittedly there is no writing evidencing Mrs. Haws' intention that the property conveyed by her be held in trust by Amber. However, under certain circumstances existing at the time a conveyance in trust is made, no writing evidencing an intent to create a trust is required. In those instances, equity will impress a constructive trust upon the property in favor of the person or persons designated by the Grantor as the beneficiary or beneficiaries of the oral trust. A constructive trust, being an equitable remedy to prevent unjust enrichment, arises by operation of law and is not within the statute of frauds....."

"..... A Court of equity in decreeing a constructive trust, is bound by no unyielding formula, but is free to effect justice according to the equities peculiar to each transaction wherever a failure to perform a duty to convey property would result in unjust enrichment."

See, Taylor v. Turner, 27 Utah 2d 39, 43; 492 P. 2d 1343.

See also, 3 Bogert on Trusts and Trustees, Part I, 1946 Ed., §471 at pages 5 and 6 defining a constructive trust.

Although not a necessary element in a constructive trust, a fiduciary relationship can lend support. See, Scott on Trusts, §462.1, pages 3414-3415. In this case, the mutual business dealings and transactions of all of the parties in connection with the trust fund sustained a confidential and fiduciary relation. In fact, the Trustees' construction of the Trust Agreement permitting Kaibab's participation with J. E. Crofts' knowledge and involvement virtually made Kaibab part of the express trust.

"The Trustee shall have power to construe the provisions of this agreement and the terms used herein and any construction adopted by the Trustees in good faith shall be binding upon all the parties hereto." (Emphasis added.)

Trust Agreement Exhibit, Article V, Section 2.

For a period of four years, the Trustees operating under said Agreement accepted therein the money or property of Kaibab and by so doing held the same for the uses and purposes of the trust for Kaibab's benefit as provided in Trust Agreement Exhibit, Article III, Section 2 thereof:

"The trustees named in the preceding section of this article, by their execution of this agreement and declaration of trust, hereby accept the trusteeship and declare that they will receive and hold the subscribers' contributions and any other money or property which may come into their hands by virtue of this instrument as trustees thereunder for the uses, purposes, and trusts, and with the powers and duties herein set forth and none other." (Emphasis added.)

Kaibab submits that the Trustees and J. E. Crofts should be bound by their conduct with Kaibab pursuant to the foregoing trust provisions. The Trustees construed said agreement to permit Kaibab's participation therein, insured its employees, billed it, accepted its premium payments, and in essence, treated it the same as any other subscriber. The Trustees should continue a similar course of conduct in making distribution of the fund and deliver to Kaibab that portion attributable to Kaibab's participation. It would be an abuse of the existing confidential and fiduciary business relationship to do otherwise.

Compare, Hawkins vs. Perry, 123 Utah 16, 253 P. 2d 372, where a constructive trust was imposed to prevent unjust enrichment in a confidential relationship.

J. E. Crofts previously received \$4,851.72 in dividends from the fund, virtual reimbursement of the 1965 fund balance, and have had the use and benefit of the same for several years. If J. E. Crofts were to receive the current \$10,075.55 fund balance, it would have full reimbursement of the \$7,571.31 premiums paid since 1965 plus \$2,504.25 to boot. This would be a 133% return directly on premium payments (emphasis added) made by J. E. Crofts, plus four years of insurance coverage on its employees at no expense. Would not this unjustly enrich J. E. Crofts? If considered a fee or commission for handling 35 of Kaibab's premiums, the return would be even more gross. Certainly, this is a proper case for restitution of the fund to the parties whose payments created it, including Kaibab.

It is noted that when the Restatement of Trusts was in preparation, it was decided not to include constructive trusts, but to deal with them in a Restatement of Restitution. Scott, Constructive Trusts, 71 L. Q. Rev. 39 (1955). In an earlier article, Scott and Seavey discuss the broad scope of the constructive trust in making restitution as follows:

"The broad scope of the constructive trust is indicated in the Restatement, which states that a constructive trust arises where a person holding title to property is subject to an equitable duty to convey it to another on the ground that he would be unjustly enriched if he were permitted to retain it. The conception of the Restatement is that a constructive trust is a remedy created to enforce a right of restitution arising out of unjust enrichment, and that it arises in every case where a benefit consisting of property has been received as to which there is a duty to make restitution to another. This broad conception of the scope of the constructive trust is expressed by Mr. Justice Cardozo. He says: 'When property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest, equity converts him into a trustee'. Dean Pound has spoken of the use of the constructive trust as affording 'specific restitution of a received benefit in order to prevent unjust enrichment'; and he has pointed out that the constructive trust, unlike the express trust, is a remedial and not a substantive institution." (Emphasis added.)

Scott and Seavey, Restitution, 54 L. Q. Rev. 29, 41 (1938). See also, Scott on Trusts, §462.2 at 3417, 3418.

By use of the constructive trust, the lower Court has restored each party to the status quo, each receiving that which was properly expected at the outset. One can speculate indefinitely about what the respective duties and obligations of the parties

would have been, if this event or that had occurred, such as mismanagement of the fund by the Trustees, etc. However, no such facts are before the Court. Both parties on appeal submitted the matter on the basis that there was no genuine issue as to any material fact and that judgment should be rendered as a matter of law. The lower Court entered its Judgment on sound legal ground, which Judgment should be affirmed by this Court.

POINT II

THE FINDINGS AND JUDGMENT OF THE LOWER COURT ARE PRESUMED TO BE VALID AND SHOULD BE AFFIRMED UNLESS THE APPELLANT SUSTAINS ITS BURDEN OF SHOWING ERROR.

After the pleadings were in and discovery completed, the parties met with the trial Court in a pretrial conference on October 29, 1974. (Letter Exhibit) At the conclusion of said conference, it was stipulated that the matter would be submitted to the Court for final determination on Defendants' joint motions for summary judgment. (R. 136) Thereafter, on November 15, 1974, the matter was submitted for final determination on arguments and memorandums of counsel. (R. 137) There is no dispute over the material facts as found by the Court in its decision. (R. 134) And formal findings of fact and conclusions of law are unnecessary on decisions of motions for summary judgment. Rule 52(a), Utah Rules of Civil Procedure.

However, the Court clearly determined that the disputed fund was produced as the result of refunds and dividends from the payment of insurance premiums by the Defendants and from no

other source, that payments were "loaded" and that refunds would be in order based on experience, that Kaibab paid 92.2% and J. E. Crofts paid 7.8% of the total premium payments, and that Kaibab was not a member and J. E. Crofts was a member of the U.A.D.A. (R. 134) Thereupon, the Court as a matter of law imposed a constructive trust upon the fund entitling each Defendant to a proportionate interest based on contributions thereto. (R. 134)

The constructive trust has been called "the most important contribution of equity to the remedies for the prevention of unjust enrichment". See, J. Dawson, Unjust Enrichment 26 (1951). Since the judgment herein is founded in equity, this Court may review questions of both fact and law for the purpose of rectifying errors where the record does not support the findings or where it clearly preponderates against them. See, Utah Const., Art. VIII, Sec. 9. Upon such review, the findings and conclusions of the trial Court are entitled to a presumption of validity, together with recognition that the burden is upon the Appellant to show that they are in error. See, Latimer vs. Katz, 29 Utah 2d 280, 283; 508 P. 2d 542 (1973).

This doctrine has been expressed by this Court by similar language in a variety of equity cases:

- (1) In an action for a decree impressing certain realty with a trust and for an accounting and other relief, the Court stated, "We will, however, not disturb the findings of fact unless it appears that the trial judge made findings

against the weight of the evidence." Peterson v. Peterson, 112 Utah 554, 138; 190 P. 2d 135.

- (2) In a boundary line case, the Court held, "although the question...is a matter of equity, we will reverse the trial Court's findings of fact only if we conclude that they are clearly erroneous." Nunley v. Walker, 13 Utah 2d 105, 112; 369 P. 2d 117.

- (3) In a proceeding for settlement of partnership accounts, the Court ruled:

"... we do not disturb his findings and judgment merely because we might have viewed the matter differently, but would do so only if it appeared that the evidence clearly preponderates against them, or that he has so abused his discretion, or misapplied the law, that an injustice has resulted." Corbet v. Corbet, 24 Utah 2d 378, 381; 472 P. 2d 430.

- (4) Many divorce cases enunciate and support these principles. See, Stone v. Stone, 19 Utah 2d 378, 380; 431 P. 2d 802 and citations therein.

- (5) In an action to quiet title to realty, the Court said:

"... we review the trial Court's findings of fact but overturn them only where it is manifest that the trial Court has misapplied proven facts or made findings clearly against the weight of the evidence." Metropolitan Investment Company v. Sine, 14 Utah 2d 36, 40; 376 P. 2d 940.

Where is the clear error which overcomes the presumption in favor of the trial court? Where is the injustice in this judgment that must be overturned? Or where is the better judgment to be substituted in its stead? We submit that there is none to be found herein. And that Appellant has not overcome its established burden.

CONCLUSION

The two Defendant corporations (Appellant and Respondent herein) have always been separate and distinct business entities. The Plaintiff Trustees construed the insurance trust agreement to permit Kaibab's participation in the group insurance plan. The Trustees and J. E. Crofts, a subscriber, both participated actively in the arrangement, soliciting Kaibab's insurance business. J. E. Crofts acted as a conduit for some of Kaibab's premium payments. For four years the Trustees insured Kaibab's employees and Kaibab paid the Trustees \$89,729.27 in premiums. Neither J. E. Crofts or its shareholders employed Kaibab's personnel or paid their insurance premiums. On its few employees, J. E. Crofts did pay \$7,571.31 in premiums.

As in any such group insurance plan to which the parties could subscribe, these premiums were "loaded" and dividends and refunds payable based on the experience of the carrier. During the time the fund was created, Kaibab paid 92.2% and J. E. Crofts paid 7.8% of the total premium payments. J. E. Crofts claims the entire fund thus created. Kaibab claims that each party should have its pro rata share.

J. E. Crofts is in the anomalous position of approving and participating in Kaibab's payment of premiums creating the trust fund, but when dividends and refunds are to be paid out of the fund, it insists that Kaibab receive nothing and it receive everything! This would amount to a 133% return on J. E.

Crofts' premiums. Can equity and good conscience permit such enrichment to J. E. Crofts and corresponding detriment to Kaibab?

We submit that the remedial device of a constructive trust to prevent or redress this unjust enrichment and make restitution should prevail in this case and distribution of the trust fund made proportionately to each of the parties in accordance with the Judgment of the Lower Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the ____ day of August,
A.D. 1975, two copies of the within and foregoing Brief of
Respondent were served upon the following by U. S. Mail, postage
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