

2000

Louis Buzianis and Gus Buzianis v. Beneficial Homes, Inc., Ronald Gibb : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH
BRIGHAM YOUNG UNIVERSITY
J. Reuben Clark Law School

LOUIS BUZIANIS & GUS BUZIANIS, :

Plaintiffs-Respondents, :

vs. :

CASE NO. 14258

BENEFICIAL HOMES, INC., a Utah
corporation, and RONALD GIBB, :

Defendants-Appellants :

BRIEF OF APPELLANTS

Beneficial Homes, Inc. and Ronald Gibb

Appeal from the judgment of the Third Judicial
District Court of Tooele County.
Gordon G. Hall, District Judge,
Presiding

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FILED

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IN THE SUPREME COURT OF THE STATE OF UTAH

LOUIS BUZIANIS & GUS BUZIANIS, :
 Plaintiffs-Respondents, :
 vs. :
 CASE NO. 14258
 :
BENEFICIAL HOMES, INC., a Utah :
corporation, and RONALD GIBB, :
 Defendants-Appellants, :
 :

BRIEF OF APPELLANTS

Beneficial Homes, Inc. and Ronald Gibb

STATEMENT OF THE NATURE OF THE CASE

This is an action brought to recover payment for services rendered.

DISPOSITION IN THE LOWER COURT

Judgment was rendered for the plaintiff in the amount of \$2,665.00 plus interest of \$517.79 and costs of \$38.90.

RELIEF SOUGHT ON APPEAL

The defendants-appellants seek a reversal of that part of the judgment holding Beneficial Homes, Inc. liable to the plaintiffs and that part of the judgment holding Ron Gibb personally liable to the plaintiffs. In the alternative, relief is sought from the amount of the judgment which is not supported by the evidence.

TABLE OF CONTENTS

	Page No.
STATEMENT OF THE NATURE OF THE CASE -----	(i)
DISPOSITION IN THE LOWER COURT -----	(i)
RELIEF SOUGHT ON APPEAL -----	(i)
STATEMENT OF FACTS -----	1
ARGUMENT	
POINT I. THE JUDGMENT OF THE TRIAL COURT WAS NOT SUPPORTED BY THE EVIDENCE -----	2
POINT II. THE AMOUNT OF THE JUDGMENT IS NOT SUPPORTED BY THE EVIDENCE -----	5
CONCLUSION -----	6

CASES CITED

National Musitime Corporation . Audio Artists Company, 487 P(2d) 560 (1971 Colo.). -----	4
Thomas v. Clayton Piano Co., 47 Ut. 91, 151 P. 543 (1915) -----	4

STATEMENT OF FACTS

Plaintiffs did excavating work for the defendants. (Tr. 2). On December 18, 1974, Plaintiffs filed suit for the sum of \$2,665.00 allegedly still owing for services rendered. Defendant, Ron Gibb, acting as his own counsel, filed a written answer generally denying the allegations of plaintiff's Complaint.

At trial the plaintiff, Louis Buzianis, testified that he performed work for Beneficial Homes, Incorporated and Ron Gibb. (Tr.2). Defendant, Ron Gibb, was a principal in Beneficial Homes, Incorporated. Mr. Buzianis further testified that he spoke with defendant, Ron Gibb, in person concerning the services involved in plaintiffs' claims in this case. (Tr. 2,3).

Plaintiff, Louis Buzianis, testified that he dug basements and backfilled for \$100.00 a lot when the first services were rendered. (Tr.4). He further, testified that he wanted to increase the price but couldn't get defendants to agree to an increase. (Tr.4,5,7, 16). Defendant Gibb denied agreeing to his increase. (Tr.12).

The transcript indicates that the amount prayed for by and awarded to plaintiff was calculated by multiplying the number of hours worked by \$15.00. (Tr.5,6).

During trial the Court concluded that defendant, Beneficial Homes, Incorporated, had never been served. (Tr.11). The Court and plaintiffs counsel further concluded that they were proceeding only with Ron Gibb as a defendant. (Tr.11).

Judgment was awarded to plaintiffs as prayed in their Complaint and against both Beneficial Homes, Inc. and Ron Gibb.

POINT I.

THE JUDGMENT OF THE TRIAL COURT WAS NOT SUPPORTED BY THE EVIDENCE.

Plaintiffs filed suit against Beneficial Homes, Inc., a Utah corporation, and Ronald Gibb. The trial court, after hearing the evidence, concluded that the defendants owed money to the plaintiffs for services rendered and awarded judgment for the plaintiffs against the defendants in the amounts prayed for in the Complaint. It is interesting to note that judgment was granted against both Mr. Gibb and Beneficial Homes, Inc., notwithstanding the fact that the Court pointed out that Beneficial Homes, Inc. had never been served (T. p. 11). The Findings and Conclusions and Judgment are not consistent with the evidence adduced.

The entry of the judgment at trial against the defendant, Ron Gibb personally, was not supported by the evidence. The evidence at trial was uncontroverted that the plaintiffs performed the services for Beneficial Homes, Inc. (T. p.2). Plaintiffs' counsel, while examining the plaintiff Louis Buzianis at trial asked him if he did work for Beneficial Homes, Inc. and Ron Gibb (T. p.2). Since Ron Gibb was the principal operating officer of Beneficial Homes, Inc., the plaintiff of necessity dealt with Ron Gibb when dealing with the corporation.

During the course of the trial, the Court tried to clarify the status of the parties, and on page 11 of the transcript

the Court declared:

"Gentlemen, so that the record will be clear in this matter, is it correct that we are now proceeding only with Mr. Gibb as the defendant and Beneficial Homes is not now a defendant, not having been served?"

Mr. Watson: We are proceeding against Mr. Gibb, yes.

The Court: All right, and him along?

Mr. Watson: Right.

The Court: So that his appearance today is on behalf of himself and certainly not on behalf of Beneficial Homes, Inc.

Mr. Watson: That is right, your Honor."

It is interesting to note that the Court did not ask Mr. Gibb in what capacity he was appearing. It must be noted that Mr. Gibb was a layman and not an attorney, and in all probability did not realize the significance of this colloquy between the Court and plaintiffs' counsel, Mr. Watson. When Mr. Gibb testified he consistently used the pronoun "We" when describing the business dealings of the parties (T.pp.11-12). If the defendant had understood that he was appearing on behalf of himself and not the corporation, he would have used the pronoun "I". "I hired them", etc. But he did not. He always talked in terms of "we" when referring to the dealings with Mr. Bizianis. Mr. Bizianis testified he did business with the corporation (T. p.2).

No writings were introduced at trial indicating that defendant had personally entered into any agreements with the plaintiffs. To the contrary, all of the testimony indicated

that the corporation, Beneficial Homes, Inc., acting through its principal officer, Mr. Gibb, contracted with Mr. Bizianis for the excavating work. No competent evidence was introduced at trial that the plaintiffs were indeed dealing with the defendant, Ron Gibb, as an individual rather than with the corporation, Beneficial Homes, Inc. through Ron Gibb.

The evidence is clear that the plaintiffs were on notice that they were dealing with the corporation and should have looked to that corporation for payment of their services. There was no evidence to indicate that the defendant, Ron Gibb, had ever obligated himself individually for the services performed for Beneficial Homes, Inc. No writing were produced with his personal signature on them and he did not admit that he was personally liable for payment for services received by Beneficial Homes, Inc.

A judgment, which is based upon findings of fact in a non-jury trial, must be supported by the evidence. Thomas v. Clayton Piano Co., 47 Ut. 91, 151 P.543 (1915). See also National Musitime Corporation v. Audio Artists Company, 487 P(2d) 560 (1971).

It is respectfully submitted that judgment should not have been entered against the defendant, Beneficial Homes, Inc., because the defendant had never been served. It is further submitted that judgment should not have been entered against Ron Gibb personally because the evidence did not support the finding that he was personally obligated for the services performed by the plaintiffs. The judgment should be set aside

as not being supported by the evidence.

POINT II.

THE AMOUNT OF THE JUDGMENT IS NOT SUPPORTED BY
THE EVIDENCE.

Judgment was rendered against both defendants for the amount of \$2665.00 plus interest of \$517.79 and costs of \$38.90.

Plaintiff Louis Buzianis testified that the original agreement between the parties was that he would perform certain excavating work for \$100 per lot (T. 4). He testified further that he wanted to increase the payment to an hourly rate of \$15.00 per hour but the defendants would never agree to the increase (T. 4, 5, 7, 16). Defendant Ron Gibb also testified that the parties never agreed to an increase in the price (T. 12).

Notwithstanding this uncontroverted testimony that the parties never agreed to an increase in price to an hourly rate of \$15.00 per hour, the record clearly indicates that the amount prayed for by plaintiffs was based on the rate of \$15.00 per hour (T. 5, 6). Plaintiffs submitted an exhibit which was transposed from Mr. Buzianis' black book in which he recorded hours worked.

The judgment of the trial court was calculated on the basis of \$15.00 per hour. This was not the rate of compensation agreed to by the parties. The agreement was \$100 per lot.

Therefore, the judgment of \$2665.00 was not calculated at the proper rate of compensation as agreed by the parties

and should be reversed.


CONCLUSION

Judgment was rendered against Beneficial Homes, Inc., a party not served. Plaintiffs were on notice that they were dealing with a corporate entity and did not prove at trial that defendant Ron Gibb had agreed expressly or by conduct to be personally liable for the corporation's obligations. Finally, judgment was rendered on the basis of an hourly rate of compensation that had not been agreed to by the parties.

It is respectfully submitted that judgment should not have been awarded against either Beneficial Homes, Inc. or Ron Gibb. Alternatively, the judgment of \$2,665.00 plus interest was not supported by the evidence.

RESPECTFULLY SUBMITTED this 4 day of February, 1976.


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