

1996

Interport, Inc., a corporation, and William York v.
Gary Delsignore and Shirley Nicholas, individually
and doing business as Quality Military Weapons :
Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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DOCKET NO. 960625 CA

INTERPORT, INC., a
corporation, and WILLIAM YORK,

Plaintiffs and Appellants,

vs.

GARY DELSIGNORE and SHIRLEY
NICHOLAS, individually and doing business
as QUALITY MILITARY WEAPONS,

Defendants and Appellees.

Case No. 960625 CA

Priority Number 15

BRIEF OF APPELLEES

Appeal from the 5th Judicial District Court in and for Iron County
Judge Robert T. Braithwaite

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IN THE UTAH COURT OF APPEALS

INTERPORT, INC., a)	
corporation, and WILLIAM YORK,)	
)	
Plaintiffs and Appellants,)	
)	Case No. 960625 CA
vs.)	
)	Priority Number 15
GARY DELSIGNORE and SHIRLEY)	
NICHOLAS, individually and doing business)	
as QUALITY MILITARY WEAPONS,)	
)	
Defendants and Appellees.)	

BRIEF OF APPELLEE

JURISDICTIONAL AUTHORITY

Jurisdiction is conferred upon the Utah Supreme Court pursuant to Utah Code Annotated Section 78-2-2(3)(j) whereby the Supreme Court has appellate jurisdiction over orders, judgments, and decrees of any court of record over which the Court of Appeals does not have original appellate jurisdiction. This case was then assigned to the Court of Appeals by the Supreme Court pursuant to Utah Code Annotated Section 78-2-2(4).

ISSUES AND STANDARD OF REVIEW

The issues presented for review are as follows:

1. Did the trial court properly grant summary judgment against the plaintiff's and in favor of the defendant's when it ruled as a matter of law that the plaintiff, Interport Inc., was not a party to the agreement between the parties. "Summary

Judgment is appropriate only when no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law". K&T, Inc., v. Koroulis, 888 P.2d 626 (Utah 1994); Higgins v. Salt Lake County, 855 P.2d 231, 235 (Utah 1993).

**CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES,
RULES AND REGULATIONS**

1. Rule 56(c) of the Utah Rules of Civil Procedure.

STATEMENT OF THE CASE

This action was heard in the Fifth Judicial District Court before the Honorable Robert T. Braithwaite, District Court Judge, on the 25th day of April, 1995, pursuant to defendant's motion for summary judgment.

The defendant's submitted a motion for summary judgment and memorandum in support of motion for summary judgment together with the affidavit of Gary Delsignore. The defendant's also submitted an amended memorandum in support of motion for summary judgment and thereafter the plaintiff's submitted a memorandum in opposition to defendant's motion for summary judgment, together with the affidavit of William York.

The parties argued the matter and the court granted summary judgment to the defendant's pursuant to an order issued on the 6th day of June, 1995 (See addendum A-1). Findings of Fact and Conclusion of Law and Order were signed on the 26th day of January, 1996 (See addendum A-2).

STATEMENT OF FACTS

On the 19th day of April, 1990, the plaintiff, Interport, Inc., filed a complaint against the defendant's alleging that the parties had entered into a written agreement on the 7th day of October, 1987, concerning the sale of firearms owned by plaintiff. The

plaintiff claimed that the terms of the agreement, as set forth in the writing, were as follows:

1. Defendant's were to grade all weapons.
2. Defendant's were to store all weapons in Cedar City, Utah, at their expense.
3. Defendant's were to prepare advertising.
4. Defendant's were to sell all firearms, and ship them to the purchasers.
5. Defendant's were to keep sales records and provide a detailed accounting of all sales.
6. Defendant's were to receive and retain amounts equal to thirty percent (30%) of the gross sales and were to remit all of the proceeds on a weekly basis.

Plaintiff attached a copy of the written agreement to their complaint and claimed that the defendant's had violated said agreement and demanded an accounting together with a judgment, costs, and attorney's fees. The plaintiff subsequently amended the complaint and named William York as an additional plaintiff.

The court found that the agreement between the parties identified in clear and unambiguous terms the allegations set forth in plaintiff's complaint concerning the number of guns, the percentage of gross sales, the advertising, the grading of weapons, where said weapons were to be stored, who was to keep sales records and accounting and how payments were to be made and since the plaintiff's relied upon the four corners of the agreement, the court determined that Interport Inc., not being named in the agreement, was not a party to the agreement.

SUMMARY OF ARGUMENTS

POINT I: The plaintiff has failed to marshal the evidence in support of the court's decision and demonstrate why the evidence is insufficient to support the decision. Based on the case law in the State of Utah, if the appellant does not marshal the evidence the reviewing court will not disturb the decision of the trial court.

Point II: The trial court correctly determined that the defendant's were entitled to judgment as a matter of law because the agreement between the parties was between William York and Gary Delsignore and not between Interport, Inc., a corporation, and Gary Delsignore.

ARGUMENT

POINT I

PLAINTIFF HAS FAILED TO MARSHAL THE EVIDENCE IN FAVOR OF THE COURT'S DECISION AND DEMONSTRATE WHY THE EVIDENCE IS INSUFFICIENT TO SUPPORT THE DECISION

Plaintiff did not attach the decision or order of the Court to it's brief and did not submit the written agreement between the parties, upon which the trial court relied, to the court of appeals. The plaintiff did not submit evidence demonstrating that the trial court relied upon the four corners of the agreement to determine that Interport, Inc., was not a party and why the trial judge was wrong in making this decision.

Plaintiff simply submitted the affidavit of William M. York and the affidavit of Gary Delsignore and basically stated that these affidavit's contain issues of fact. This Court has ruled, in the case of Schindler v. Schindler, 766 P.2d 84, 88 (Utah Ct. App. 1989) that:

“to mount a successful attack on the trial court's factual findings, an appellant must marshal all of the evidence in support of the trial court's findings and then demonstrate that, even viewing the evidence in the light

most favorable to the findings, the evidence is insufficient to support the findings, or that its findings are otherwise clearly erroneous. (citing Scharf v. BMG Corp., 700 P.2d 1068, 1070 (Utah 1985).”

Another case directly on point is Online Corp., v. Granite Mill, 849 P.2d 602 (Utah Ct. App. 1993). In that case this court stated:

“An appellant must marshal the evidence in support of the findings and then demonstrate that despite this evidence, ‘ the trial court’s findings are so lacking in support as to be ‘against the clear weight of the evidence,’ thus making them clearly erroneous.”... “If the appellant fails to marshal the evidence, the appellate court assumes that the record supports the findings of the trial court and proceeds to a review of the accuracy of the lower courts conclusion of law and the application of that law in the case”.

In the instant case the failure to attach the agreement and the findings of fact, conclusions of law and orders of the court and marshal the evidence in their favor and then tell the court of appeals why the trial judge was wrong does not meet the standard which has been required by the court of appeals and the decision of the trial judge should be affirmed.

POINT II

THE FACTS SUBMITTED TO THE TRIAL COURT ARE UNDISPUTED AND ARE SUFFICIENT TO ALLOW SUMMARY JUDGMENT DETERMINING THAT THERE WAS NO CONTRACT BETWEEN INTERPORT, INC., A UTAH CORPORATION, AND GARY DELSIGNORE

The agreement between the parties is an agreement between York and Delsignore. There is no mention of Interport, Inc., in the agreement and the affidavit of Gary Delsignore states that he never had an agreement with Interport, Inc.. William York, in his affidavit, simply states that defendant’s were aware that affiant was acting for, and on behalf of, Interport, Inc., in the brokerage arrangements; that all shipments of firearms were picked up directly from Interport, Inc. warehouse in St. George, Utah by

Nicholas and or Delsignore. This affidavit does not state that the written agreement was not between Delsignore and York but seems to claim that there was a verbal contract and trust between Interport and the defendant's. The trial court determined that the agreement was clear and unambiguous as it relates to the parties to the agreement, York and Delsignore, and that there was no need to look at oral evidence to determine the agreement between the parties or who the parties were.

This court has held on many occasions that the parties intent "is to be ascertained first by looking within the four corners of the agreement itself". Footte v. Taylor, 635 P.2d 46 (Utah 1981). In the case presently before the court there is no question that the parties intended the agreement to be between York and Delsignore.

Utah Courts have also held that contract language is ambiguous only "if the words used to express the intent of the parties are insufficient so that the contract may be understood to reach two or more plausible meanings." Larson v. Overland Thrift and Loan, 818 P.2d 1316 (Utah App. 1991). In this case the court found that the plaintiff's filed a complaint relying on the agreement and that the agreement contained all of the terms necessary to ascertain the rights of the parties and who the parties were.


In the case of Ron Case Roofing & Asphalt v. Blomquist, 773 P.2d 1382 (Utah 1989) the court affirmed a summary judgment where one party had offered extrinsic evidence to show the parties intent regarding an allegedly nonintegrated contract. The Supreme Court observed that the party had ignored the clear rule, that in interpreting a contract, "we first look to the four corners of the agreement to determine the intentions of the parties." The use of extrinsic evidence is permitted only if the document appears to incompletely express the parties' agreement or is ambiguous. The court then found

that the trial court had properly precluded the appellant from introducing extrinsic evidence. In this case the parties are identified and the terms of the agreement are relied upon by the plaintiff's as alleged in their complaint. There is no need to look at extrinsic evidence to determine who the parties are and the judgment of the trial court should be affirmed.

CONCLUSION

The plaintiff's relied upon the agreement between the parties as alleged in their complaint. The court found that the agreement between the parties was not ambiguous as it related to the terms of the agreement and who the parties were. Defendant's respectfully request that the decision of the trial court be affirmed.

DATED this 14th day of February, 1997.




JAMES M. PARK

CERTIFICATE OF MAILING

I hereby certify that on this 14th day of February, 1997, I mailed TWO (2) true and correct copies of the BRIEF OF APPELLEE first class, postage prepaid to:

KRISTINA M. NEAL
McDOUGAL & SMITH, LLC
2964 West 4700 South, Suite 112B
Taylorsville, Utah 84118



JAMES M. PARK

ADDENDUM

On Judicial District Court - Iron County

FILED

JUN 06 1995

CLERK
DEPUTY

IN THE FIFTH JUDICIAL DISTRICT COURT IN AND FOR IRON COUNTY,
STATE OF UTAH

INTERPORT, INC, a corporation;
and WILLIAM YORK,
Plaintiffs,

vs.

GARY DELSIGNORE and SHIRLEY
NICHOLAS, individually and
doing business as "QUALITY
MILITARY WEAPONS",
Defendants.

ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT

Civil No. 900901098

The above-entitled case came before the Court on
Defendant's Motion for Summary Judgment against plaintiff
Interport, Inc., and the Court having heard arguments in support
and opposition thereto; and having reviewed the file, and good
cause appearing,

IT IS HEREBY ORDERED that Defendant's Motion for Summary
Judgment against plaintiff Interport, Inc. should be and hereby
is granted, defendant to prepare a judgment accordingly.

DATED this 6th day of June, 1995

Robert T. Braithwaite
Robert T. Braithwaite
District Court Judge



MAILING CERTIFICATE

I hereby certify that on this 16th day of June,
1995 I mailed a copy of the foregoing ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT, first class postage, prepaid to the following:

JAMES PARK
965 SOUTH MAIN
CEDAR CITY UTAH 84720

WILLARD BISHOP
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CEDAR CITY UTAH 84720

P. Alger
DEPUTY CLERK

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COPY

JAN 30 1996

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DEPUTY

IN THE FIFTH JUDICIAL DISTRICT COURT OF IRON COUNTY

STATE OF UTAH

INTERPORT, INC, a)
corporation, and WILLIAM YORK,)

Plaintiff,)

vs.)

GARY DELSIGNORE, and)
SHIRLEY NICHOLAS, individually)
and dba QUALITY MILITARY)
WEAPONS,)

Defendant)

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER**

Civil No 900901098CV
Judge Robert T. Braithwaite

The above entitled matter came on regularly for hearing pursuant to Defendant's Motion for Summary Judgment against Interport, Inc , before the Honorable Robert T Braithwaite, District Court Judge on the 25th day of April, 1995. The Plaintiff was not present but was represented by attorney, Willard R. Bishop. The Defendant was not present but was represented by attorney, James M Park, *THE PARK FIRM, P.C.* The Court having heard arguments of

counsel and being fully advised in the premises, now therefor, the Court makes and enters the following:

FINDINGS OF FACT

1. The Court finds that the above entitled action was based upon a written agreement. Said written agreement was to William York from Gary Delsignore. (See copy of agreement which is attached hereto and marked Exhibit "A".)

2. The Court finds, after reviewing the agreement that said agreement was dated October 7, 1987 and was for the sale of certain firearms.

3. The Court finds that the hand written agreement is between William York and Delsignore only, and there is no mention in said agreement, whatsoever, which infers that Interport, Inc., has ever been or was ever a party to the contract between York and Delsignore.

4. The Court finds, and specifically requested that the Defendant provide proof of any kind that would show that Interport, Inc. ,was a party to the contract between William York and the Defendant, Gary Delsignore and no such proof could be provided.

5. The Court finds that the four corners of the contract are clear and unambiguous and the contract specifically addresses the number of guns, the percentage of gross sales, advertising, the grading of weapons, where the weapons were to be stored, who was to keep sales records and accounting, and how payments were to be made, shows that the Court should not go beyond the boundaries of the contract and there is no evidence whatsoever, to convince this Court that

Interport, Inc , was ever made a party to the contract.

CONCLUSIONS OF LAW

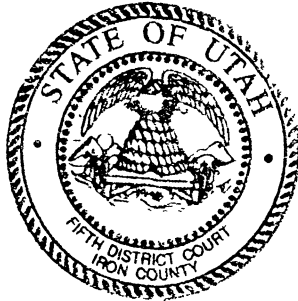
Based on the foregoing Findings of Fact, the Court concludes that an appropriate Order should be made and entered in accordance therewith.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law and good cause appearing therefor,

IT IS HEREBY ORDERED that Defendant's Motion for Summary Judgment against Plaintiff, Interport, Inc., should be and hereby is granted

DATED this 26 day of January, 1996.



BY THE COURT:

A handwritten signature in dark ink, appearing to read "R. T. Braithwaite", written over a horizontal line.

ROBERT T. BRAITHWAITE
District Court Judge