

1977

Smith & Edwards v. The Golden Spike Little League, Dee Bloxham, Dave Anderson, Pete Halvo, Gloria Boren, Tom Larse, Pete Foremaster, Mike Leshko, Robert Downard, Ron Willis, Lon Eskelson, Randy Deem And Stan Sems : Brief of Appellant

Utah Supreme Court

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David Gladwell; Attorney for Appellant

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IN THE SUPREME COURT FOR THE  
STATE OF UTAH

SMITH & EDWARDS,

Plaintiff and Appellant, /

vs. /

THE GOLDEN SPIKE LITTLE LEAGUE, DEE  
BLOKHAM, DAVE ANDERSON, PETE MONTALVO, /  
GLORIA BOREN, TOM LARSEN, PETE  
FOREMASTER, MIKE LESHKO, ROBERT  
BONNARD, RON WILLIS, LON ESKELSON, /  
NEDDY DEEM, and STAN SEMS, /

Defendants and Respondents. /

BRIEF OF RESPONDENTS,  
MIKE LESHKO and RON WILLIS

Appeal from the Decision of the Superior  
District Court for Weber County, Utah,  
Honorable John F. Wahlquist, Judge.

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IN THE SUPREME COURT FOR THE  
STATE OF UTAH

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SMITH & EDWARDS,

Plaintiff and Appellant, /

vs. /

THE GOLDEN SPIKE LITTLE LEAGUE, DEE  
BLOXHAM, DAVE ANDERSON, PETE MONTALVO, / Case No. 14803  
GLORIA BOREN, TOM LARSEN, PETE  
FOREMASTER, MIKE LESHKO, ROBERT  
DOWNARD, RON WILLIS, LON ESKELSON, /  
RANDY DEEM, and STAN SEMS,

Defendants and Respondents. /

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BRIEF OF RESPONDENTS,  
MIKE LESHKO and RON WILLIS

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STATEMENT OF THE NATURE OF THE CASE

This is an action seeking to collect for baseball uniforms and equipment furnished by the Plaintiff-Appellant to the Golden Spike Little League for the operation of a summer baseball recreational program.

DISPOSITION IN LOWER COURT

The Lower Court with the Honorable John F. Wahlquist presiding found no cause of action as against all of the

Defendants, with the exception of Golden Spike Little League.

#### RELIEF SOUGHT ON APPEAL

The Respondents seek to have this Court affirm the Lower Court's dismissal of the Plaintiff's claim as against the Respondents, Mike Leshko and Ron Willis.

#### STATEMENT OF FACTS

Prior to April of 1974, Tom Larsen, the Mayor of Harrisville City, and other interested citizens banded together to form a little league baseball association (R-179). Various persons were nominated and elected to be officers of the Little League Baseball Association (R-179,R-211).

On approximately May 8, 1974, Randy Deem became president and a meeting of the Little League Association was held, at which time authorization was given for the purchase of equipment to be used by the Little League players. (R-187,-188) Thereafter various items of equipment were obtained from the Appellant for use in the Little League.

The Respondent, Dave Anderson, who was an officer of the Little League Baseball Association, contacted the Appellant and made arrangements with a Brad Briggs, the manager of the downtown Ogden store of the Appellant, (R- 353) to purchase equipment for the Little League. The arrangement provided that coaches and managers of the Little League could pick up the equipment as they

needed it. (R-151,-152) The account set up by the Appellant was in the name of Golden Spike Little League in care of Dave Anderson (R-154). The arrangement set up with the Appellant by Dave Anderson was to the affect, that the coaches and managers could pick up the equipment and sign a receipt as evidence that they had received the equipment (R-156,-157). The managers and coaches were not accepting personal responsibility for the payment of the money when they signed to pick up the equipment (R-161,-162,-197).

The owner of the Appellant company, Albert M. Smith, testified that the managers and coaches did not accept the liability for the merchandise when they signed the slip, but were merely acknowledging the receipt of the equipment, which was billed to the Golden Spike Little League, c/o Dave Anderson (R-244). The Appellant was looking to the Golden Spike Little League and to the community to pay the bill incurred for the equipment. (R-257)

The Respondents, Ron Willis and Mike Leshko, were managers of the Little League team and had no authority to open an account with the Appellant (R-173). The Respondents, Leshko and Willis, were also at no time officers elected to the League nor did they attend or vote in any Little League meetings. (R-187) The League itself was a non-profit association (R-224).

It was the testimony of the president and owner of the Appellant, Albert M. Smith, that the equipment picked up by all of the Respondents, other than The Golden Spike Little League and Dave Anderson, that responsibility for payment would be upon the Association and billed to Mr. Anderson for lack of a better address of the buyer (R-279), and that Mr. Smith felt there was no liability on those who picked up merchandise charged to the Golden Spike, but was merely an acknowledgement that the managers, such as the Respondents, Mike Leshko and Ron Willis, were acknowledging by their signature that they had picked up the merchandise. (R-244)

It was admitted by the Attorney for the Appellant, that the individual Defendants have not been established as agents of The Golden Spike Little League. (R-278)

#### ARGUMENT

#### POINT I

MIKE LESHKO AND RON WILLIS WERE NOT OFFICERS, DIRECTORS, OR AGENTS OF THE GOLDEN SPIKE LITTLE LEAGUE AND DID NOT ASSUME ANY PERSONAL LIABILITY FOR THE DEBTS INCURRED BY SAID ORGANIZATION.

As set forth in the Statement of Facts, all of the evidence before the Court and the admission of Counsel for the Appellant is to the effect, that there was no intended liability on the part of the Respondents, who were managers of the individual Little League teams, such as the Respondents, Mike

Leshko and Ron Willis, either by the Respondents themselves or by the Appellant, and that at no time were the said Respondents deemed to be agents of The Golden Spike Little League or acting as agents on behalf of any party in regards to liabilities for the merchandise which they picked up for use by the individual teams.

It is further a matter of record before the Court, that the manager, Brad Briggs, for the Appellant acknowledged and understood, that managers of teams were not authorized for credit and that there was no intent to extend credit to them. (R-358)

The direct testimony of the president and owner of the Appellant business, Albert M. Smith, stated specifically that a signature on a receipt by a person picking up equipment was only for the purpose of acknowledging that the items had been received (R-244), and that Mr. Smith was looking to The Golden Spike Little League Association and to the community for the payment of the indebtedness rather than to the coaches and managers (R-257).

The previous Respondent Brief submitted on behalf of Tom Larsen and Robert Downard in regards to the citations set forth by the Appellant are adopted by the Respondents, Mike Leshko and Ron Willis, and irrefutably refute any agency upon any of the individual Respondents who were only managers of the Little League teams.



CONCLUSION

It is submitted to the Court, that the evidence clearly exhibits that the Respondents, Mike Leshko and Ron Willis, were never officers, directors, or agents of The Golden Spike Little League or assumed any personal responsibilities for the indebtedness, and that the Court should affirm the Judgment of the Lower Court, wherein the Court found no cause of action as to these Respondents.

DATED this 8 day of December, 1977.

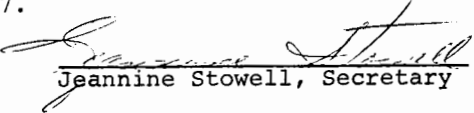
Respectfully submitted,

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CERTIFICATE OF MAILING

A copy of the foregoing Brief of Respondents, Mike Leshko and Ron Willis, was posted in the U.S. mail postage prepaid and addressed to the Attorney for the Appellant, David L. Gladwell, 2910 Washington Boulevard, Suite 305, Ogden, Utah 84401; and to the Attorneys for the Respondents, Robert A. Echard, 427 - 27th Street, Ogden, Utah 84401; Frank S. Warner, 9 Bank of Utah Plaza, Ogden, Utah 84401; George B. Handy, 2650 Washington Boulevard, Ogden, Utah 84401; Dale T. Browning, 2605 Washington Boulevard, Ogden, Utah 84401; Parley Baldwin, 2605 Washington Boulevard, Ogden, Utah 84401; and to Darrell Renstrom, 2640 Washington Boulevard, Ogden, Utah 84401, on this 5 day of December, 1977.

  
Jeannine Stowell, Secretary