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Young Farms Limited, Phillip O. Boyer, Virgil Condon, Boyd J. Farr, Homer L. Hale, Marie M. Irvine, G. Kenneth Johnson, Kenneth W. Jones, Rober C. Newman, Toffie Sawaya, Richard Stover, William Tingey, James E. Watts, Ralph M. Wright v. Richtron Inc, Paul H. Richins, Aral Wesley Allred, Sarah Elaine Allred, and Leo H. Richins : Reply Brief of Appellants

Utah Supreme Court

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BRIEF

IN THE SUPREME COURT OF THE STATE OF UTAH

919902  
YOUNG FARMS LIMITED, a limited )  
partnership, PHILLIP O. BOYER, )  
VIRGIL CONDON, BOYD J. FARR, )  
HOMER L. HALE, MARIE M. IRVINE, )  
G. KENNETH JOHNSON, KENNETH W. )  
JONES, ROBERT C. NEWMAN, TOFFIE )  
SAWAYA, RICHARD STOVER, WILLIAM )  
TINGEY, JAMES E. WATTS, RALPH M. )  
WRIGHT, limited partners, )

Case No 919902

Plaintiffs-Appellants, )

-vs- )

RICHTRON, INC., a Utah corporation, )  
and PAUL H. RICHINS; ARAL WESLEY )  
ALLRED and SARAH ELAINE ALLRED )  
his wife; BANK OF UTAH, a Utah )  
corporation, )

Defendants, )

LEO H. RICHINS, )

Intervening Respondent. )

APPELLANTS' REPLY BRIEF

Appeal from the Judgment of the Second Judicial District  
Court for Davis County, State of Utah  
The Honorable Douglas L. Cornaby, Judge

Leo H. Richins, Pro Se  
Intervening Respondent  
141 East 100 South  
Kaysville, Utah 84037

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**FILED**  
JAN 16 1985

Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

YOUNG FARMS LIMITED, a limited	)	
partnership, PHILLIP O. BOYER,	)	
VIRGIL CONDON, BOYD J. FARR,	)	
HOMER L. HALE, MARIE M. IRVINE,	)	
G. KENNETH JOHNSON, KENNETH W.	)	
JONES, ROBERT C. NEWMAN, TOFFIE	)	
SAWAYA, RICHARD STOVER, WILLIAM	)	Case No. 19902
TINGEY, JAMES E. WATTS, RALPH M.	)	
WRIGHT, limited partners,	)	
 Plaintiffs-Appellants,	)	
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ALLRED and SARAH ELAINE ALLRED	)	
his wife; BANK OF UTAH, a Utah	)	
corporation,	)	
 Defendants,	)	
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TABLE OF CONTENTS

	<u>Page</u>
REPLY TO INTERVENING RESPONDENT'S STATEMENT OF CASE BY LOWER COURT . . . . .	1
REPLY TO STATEMENT OF FACTS . . . . .	3
ARGUMENTS. . . . .	4
REPLY TO ARGUMENT I . . . . .	4
REPLY TO ARGUMENT II . . . . .	4
REPLY TO ARGUMENT III . . . . .	5
REPLY TO ARGUMENT IV . . . . .	5
REPLY TO ARGUMENT V . . . . .	6
REPLY TO ARGUMENT VI . . . . .	6
REPLY TO ARGUMENTS VII AND VIII . . . . .	7
CONCLUSION . . . . .	7

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corporation,	)	
Defendants,	)	
LEO H. RICHINS,	)	
Intervening Respondent.	)	

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REPLY TO INTERVENING RESPONDENT'S STATEMENT OF  
DISPOSITION OF CASE BY LOWER COURT

Intervening respondent, in the last sentence of the first paragraph, states that the issue of who was to be the general partner of the Young Farms limited partnership was not adjudicated in this case but had been adjudicated previously in another case. The record indicates that the defendants filed a counter claim in response to the original complaint (R. 18). The first nine paragraphs of the counter claim set forth a claim based upon the concept that the defendant Richtron, Inc. is the only entity entitled to act as the plaintiff Young Farms, Limited general partner.

The defendants' answer and cross claim to the plaintiffs' Amended Complaint (R. 274) fails to include a counter claim and there is no claim that the limited partnership is being improperly represented, although on their Fifth Defense the defendants claim lack of standing on behalf of the individual plaintiffs.

At the end of the first pre-trial, defendant's counsel included the question of whether or not Richtron's resignation as a general partner

gave plaintiff the right to substitute as general partner (R. 446). On the 31st day of October, 1983 the defendant Paul H. Richins submitted an Affidavit (R. 521) including all of the arguments and documentation to support the arguments that he makes now in regard to whether or not the plaintiff limited partnership can be represented by someone else other than the defendant Richtron, Inc. The defendant Paul H. Richins then made a Motion to Dismiss Plaintiff's Motion for Partial Summary Judgment on the basis of the arguments made in his Affidavit. This was done on November 1, 1983 (R. 583). Defendant Richin's Motion was denied and the Court granted Plaintiff's Motion for Partial Summary Judgment (R. 584, 585).

The Court's ruling in regard to defendants Motion to Dismiss Plaintiff's Motion for Partial Summary Judgment adjudicates the issue of whether or not the plaintiff can be represented by someone other than Richtron, Inc.. However, this issue is not one that is material to the appeal by the plaintiffs and the intervening respondent Leo Richins.

Leo Richins contention that the \$10,431 that was deposited into the Court as the 1980 payment on the real estate contract was deposited on behalf of Paul H. Richins likewise doesn't stand up to a perusal of the record. The original order requiring the deposit was entered on the 16th day of February, 1982 and required the defendants to deposit into the Court the sum of \$10,431 which represents the 1980 payment on the Allred contract and the plaintiff was to deposit a like sum into the Court, representing the 1981 Allred contract payment (R. 234). The minute entry (R. 233) provided that Richtron was to put the money in the Davis County Clerk's office. If the defendant Richins did not like the way the order was drafted and contended that he had no interest in the contract, his counsel should have had the order read that only Richtron was required to make the payment. Instead, all other orders dealing with the deposit (R. 317, 358, 359, 419, 445 and 453) deal with the Letter of Credit as coming from both defendants. In fact, the defendants Motion for an Order Setting Aside and Vacating the Order Respecting the Collection of the Letter of Credit (R. 459) claims that the order (R. 453) dated June 9, 1983 requiring the payment should be set aside and vacated because the defendant Richtron, Inc. had filed in bankruptcy and the Court did not have jurisdiction to require the defendant Richtron, Inc. to provide the funds. This motion was denied (R. 487).

The Court granted the plaintiff's Motion for a Partial Summary Judgment, dismissing the defendants Richtron, Inc. and Paul H. Richins as

defendants and thereafter dealt with the question of the relationship between the plaintiffs being the Young Farms limited partnership and the defendants Allred being the owners of the limited partnership property.

The money was deposited in the Court not by Leo Richins but was deposited in the Court by the defendants. The fact that the Letter of Credit was drawn on the account of Leo Richins has no materiality. The Court cannot go in back of the immediate transfer to determine who put up the money or for what reasons. The money was put in for the purpose of the 1980 payment. The appellants were required to make that payment to the Allreds to keep the contract viable (R. 660). The source from which the money came was the defendants and not Leo Richins.

#### REPLY TO STATEMENT OF FACTS

In Intervening Respondent's Statement of Facts, Mr. Richins spends a great deal of time on the proposition that Young Farms Limited has no authority to bring the action and the appeal. This issue is one between the defendant Richtron, Inc. and the plaintiffs and was fully resolved by the trial court, appealed from by the defendant Richtron, Inc., and their appeal was later withdrawn and is not an issue in this appeal and Mr. Richins has no standing to raise these issues on behalf of Richtron, Inc.

It is interesting that Mr. Richins brings in evidence that is not a part of the record and which is immaterial to this case (see footnote on p. 8 of Mr. Richins' brief).

The last part of the last sentence in the finishing paragraph number 31 refers to \$75,000 that was a liability of Young Farms to Richtron. There was no evidence of a liability of Young Farms to Richtron. In fact, as pointed out earlier, the defendant Richtron did not file a counter claim against the plaintiff Young Farms Limited.

Mr. Leo Richins spends a great deal of time in his Statement of Facts pointing out that he was not a party, was not obligated to make any payments in this lawsuit, that he did so on behalf of the defendant Paul H. Richins, his son, and that his son had no interest in the property or any obligation to make the payment, that he, Leo, had previously paid almost all of the 1980 payment that was put into the escrow (\$9,310.33 of it), for which he received an interest in the contract, and yet he claims that he has an interest in the money paid.

I can't see where it makes any difference if Mr. Leo Richins provided the source from which the funds came. The funds were placed into the Court for the purpose of being the 1980 contract payment to the Allreds. Once the defendants were dismissed out of the lawsuit, the funds should have been maintained for that purpose and that purpose alone.

Mr. Paul Richins was the president of Richtron, Inc. Richtron, Inc. had a fiduciary duty to see to it that the payment was made on the contract as that money had been paid by the plaintiffs to make that payment. The relationship between Leo Richins and his son in regard to the payment is immaterial and the funds belong to the plaintiffs as they were required to make up the payment to the Allreds in order to keep the real estate contract viable for the limited partnership.

#### ARGUMENTS

##### REPLY TO ARGUMENT I

There is no question but what the Court's order was a final order in regard to the 1980 payment and the money involved therein, nor was there any necessity for any sworn statement from the plaintiffs in regard to their claim for the \$10,431. This money was put into the Court as the 1980 payment on a contract that was being purchased by the plaintiffs. They had the possessory right to the property and they had a legal right to have the general partner protect their investment interests as the general partner was their fiduciary agent in this regard.

The appeal was not taken until all of the issues were disposed of in the case. The issue in regard to the \$10,431 was reserved and was appealed after the final order of the Court.

##### REPLY TO ARGUMENT II

In response to Mr. Richins' argument that the appellant Young Farms has no right to file or maintain this appeal, Mr. Leo Richins is not the party that has any interest in this determination. This right would only relate to Richtron, Inc. and Mr. Richins is not representing Richtron, Inc. in any sense of the word and the defendant Richtron, Inc. has not filed a brief as leave was given them to do by this Court.

There is no question that the District Court has the right to determine the relationship and rights of the parties and this matter is res



judicata; this issue was determined judicially by the lower court and that determination was appealed by the defendants Richtron, Inc. and Paul Richins, and their appeal was withdrawn (R. 598, 605, 675, 676), and the question of appellant Young Farms' right to maintain this appeal is res judicata.

#### REPLY TO ARGUMENT III

It is interesting that Mr. Leo Richins would make this argument which basically supports the appellants' position in regard to the Blackfoot Farms case. Richtron, Inc. and Paul Richins were parties to this action. They were dismissed out of the action. If you follow Mr. Richins' argument to its logical conclusion, the monies that were deposited in the Court would then belong to the remaining parties, i.e., the plaintiffs and/or defendants Allreds, which is exactly the point the plaintiffs are making.

If Mr. Leo Richins had wanted to be a party, he should have made an effort to become one in the District Court. If he thought he had an interest in the money, he should have made an effort to protect his interest in the District Court. If the defendants had wanted to present arguments and/or be heard, they could have done so. The plaintiffs made a motion to reinstate Mr. Paul Richins as a party and to try the case as a whole (see pages 4 through 8 of the transcript). Mr. Richins objected to plaintiffs' motion to reinstate the defendants into the action.

#### REPLY TO ARGUMENT IV

Mr. Leo Richins in this argument fails to recognize that what the lower court did in this action was conduct an accounting of the rights of the parties to the limited partnership's assets and rule that the limited partnership's assets belonged to the limited partnership and that the defendants Richtron, Inc. and Paul Richins had no interest therein and that, upon payment of the outstanding obligations on the contract of sale to the Allreds, that contract was reinstated in the name of the Young Farms Limited and not in the name of Richtron, Inc.

This argument is moot as the general partner and its president were previously dismissed out of the action and the rights of the parties were determined by the Court, appealed from, and their appeal withdrawn.

The \$10,431 was deposited, without question, for the purpose of being the 1980 payment on the real estate contract, which represented the real estate which comprised the assets of the limited partnership. Who has a better right to the limited partnership assets than the limited partnership and its limited partners? The Court makes that determination and the defendants objected to that determination and appealed that ruling and later withdrew their appeal. That ought to make the issue moot.

A review of the record, in particular the final order (R. 678), can lead to no other conclusion but that the Court determined the rights of the parties in regard to the limited partnership property and made a final accounting in regard to that property and the rights of the parties to it.

#### REPLY TO ARGUMENT V

I can't understand how, if Mr. Paul Richins has no liability for any of Richtron Inc.'s obligations, he would have been so willing to put \$10,431 into the Court. He was represented by competent counsel at the time. If he objected to the placing of the money into Court, he should have made the objection known and/or changed the order. He was certainly aware that the purpose for the \$10,431 was the 1980 payment which he, as the president of Richtron, Inc., withdrew from the escrow account, knowing that there were no funds to replace it.

I fail to see where this argument has any materiality to the question of Mr. Leo Richins' right to the money. Mr. Leo Richins didn't put the money into the Court, Mr. Paul Richins did. Mr. Leo Richins provided the money to his son, Paul Richins, and I don't believe the reasons for his providing those funds have any materiality whatsoever as to what those funds were to be used for or placed in the Court for. They were placed into the Court for the purpose of paying the 1980 payment on the Allred contract. There is absolutely no question at all about that fact. Whether the funds were paid by Paul Richins mistakenly or by his father to Paul and then to the Court makes no difference.

#### REPLY TO ARGUMENT VI

"The initial 'Order to Compel Deposit' signed by Judge J. Duffy Palmer (R. 234) required Richtron and Paul Richins to deposit \$10,431 into Court, representing the 1980 payment on the Allred contract, to be held

'PENDING THE DETERMINATION OF THE RIGHTS OF THE PARTIES IN THE ALLRED CONTRACT AND THE PROPERTIES UNDERLYING SAID CONTRACT.'" (p. 39 of Brief of Intervenor.) The Court determined the rights of the parties in the Allred contract. The Court determined that the Young Farms Limited, the limited partnership, had the right, upon the payment of the delinquent payments, of which the 1980 \$10,431 was one, to be put in the place of defendant Richtron, Inc. as the purchaser of the property covered by the Allred contract. The Court made the determination that the defendants Paul Richins and Richtron, Inc. had no interest in that property. There can be no other interpretation of the results of this lawsuit. The Court's ruling that the Court would go in back of the initial deposit to determine where the money came from and award the money to that party, Mr. Leo Richins, who is not a party to the lawsuit, is in error and that error should be cured by this appeal.

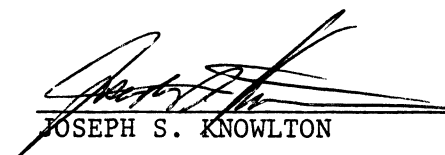
#### REPLY TO ARGUMENTS VII AND VIII

In reply to arguments VII and VIII, it makes no difference why Leo Richins deposited the Letter of Credit. The Letter of Credit was the same as cash and no consideration was required for it. It was deposited for the purpose of paying the 1980 payment on the Allred contract. The fact that it was contributed by Mr. Leo Richins does not make it his property. It was deposited to replace a payment that was made by the defendant Richtron, Inc. on behalf of and with the funds that should have been from the plaintiff limited partnership. The question of where cash comes from to make a payment required by the Court under the contract is immaterial. This Court should look at what the purpose was for which the money was deposited. It was deposited, without question, as the 1980 payment on the Allred contract covering the limited partnership's real property.

#### CONCLUSION

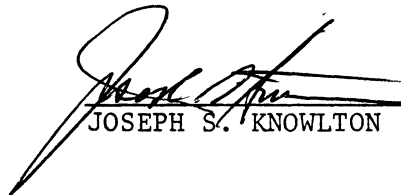
The \$10,431 was to be the 1980 payment. It was paid by the limited partnership to the general partner for that purpose and it was later required that the limited partnership pay it again in order to maintain its property rights. The limited partnership should have the right to recover this payment.

DATED this 16th day of January, 1985.

  
JOSEPH S. KNOWLTON

MAILING CERTIFICATE

I hereby certify that I have this 16th day of January, 1985 mailed <sup>u</sup> a true and correct copy, postage prepaid, of the foregoing Appellants' Reply Brief to Leo H. Richins, Pro Se, Intervening Respondent, 141 East 100 South, Kaysville, Utah 84037; and John T. Anderson, Attorney for Defendant Richtron, Inc., Hansen Jones Maycock & Leta, 50 West Broadway, Salt Lake City, Utah 84101.

  
JOSEPH S. KNOWLTON