

1977

Smith & Edwards v. The Golden Spike Little League, Dee Bloxham, David Anderson, Pete Montalvo, Gloria Boren, And Tom Larsen : Respondents' Brief of Appeal

Utah Supreme Court

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IN THE SUPREME COURT
OF THE
STATE OF UTAH

SMITH AND EDWARDS COMPANY,)	
Plaintiff and Appellant,)	Case No. 14803
vs.)	
GOLDEN SPIKE LITTLE LEAGUE,)	
DEE BLOXHAM, DAVID ANDERSON,)	
PETE MONTALVO, GLORIA BOREN,)	
and TOM LARSEN,)	
Defendants and Respondents.)	

RESPONDENTS' BRIEF OF APPEAL

Appeal from the Judgment of the Second Judicial District
Court in and for Weber County, State of Utah, the Honorable
John F. Wahlquist presiding

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AUTHORITIES

STATUTES CITED

36 U.S.C.A., Chapter 41 A, Pocket Supp. 3, 4

CASES CITED

Security First National Bank of Los Angeles vs.
Cooper, 145 P2d 722 (Cal)7

Haun vs. Nored, 278 P2d, 569 (Ore)7

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PETE MONTALVO, GLORIA BOREN,)
and TOM LARSEN,)
Defendants and Respondents.)

Case No. 14803

NATURE OF THE CASE

This is an action brought by Plaintiff-Appellant against Golden Spike Little League which consisted of a group of parents of young baseball players and other members of the community and various members of the same for purchases made by various individuals in the name of Golden Spike Little League for baseball uniforms and equipment.

The response to Plaintiff-Appellant's Brief herein is based upon the record, exhibits and transcript in this matter. All references to the record are designated as (R) and all references to the transcript are designated as (T). It will be noted that on the transcript there is a page designation on the upper right-hand corner and an additional page designation on the lower right-hand

corner. All references in transcript are to the page designation on the lower right-hand corner.

DISPOSITION IN LOWER COURT

The Court, sitting without a jury, entered judgment against Golden Spike Little League and found no cause of action against all the other Defendants-Respondents.

STATEMENT OF FACTS

In March of 1974, Tom Larsen, Mayor of Harrisville, a town north of Ogden called a few of the citizens together and suggested that a baseball league be organized to involve the young people of some of the surrounding communities (T 314). David Anderson, one of the respondents herein, agreed to help and was asked by Mayor Larsen to act as vice-president in charge of the senior league (T 314). Gloria Boren, one of the respondents herein, answered a notice in the local newspaper asking for volunteers and was appointed secretary to transcribe notes of the meetings (T 181). There was no Board of Directors selected or elected. There was no vote on who were to be officers of the organization (T 187, 188, 327, 328, 331). Respondent, Dee Bloxham, was Chief Umpire in the beginning and after the total debt was incurred consented to act as president (T 223, 237).

The group adopted a title "Golden Spike Little League" and upon the payment of fees of Two Hundred Twenty Nine and 50/100 (\$229.50) and Eighty Dollars (\$80.00) to Little League Inc. (Exhibit 17 D and 18 D) received charters from that organization wherein

there was "granted herein all privileges needed for proper conduct of your league consistent with the best interest of the Little League Movement" (Exhibit 15 D & 16 D).

Little League Baseball Inc. is a corporation created by an Act of Congress (Pocket Supplement 36, U.S.C.A. Chapter 41A). Its purpose is found in Section 1073 and its powers are in essence those held by any domestic corporation (Section 1074).

During one of the early meetings of Golden Spike Little League the need for uniforms and equipment was discussed and various members present agreed to contact the sporting good houses for bids as to the best prices available (T 143). Respondent, David Anderson, contacted the Plaintiff-Appellant herein, obtained a price bid and reported this to the organization (T 317). Anderson did not open an account nor enter into a contract with Plaintiff-Appellant at this time. At a subsequent meeting where parents and players and anyone else interested voted (T 327, 328) it was decided to deal with Plaintiff-Appellant in that the managers and coaches were to pick up their equipment as it was available and needed, which they did to the amount of Three Thousand Nine Hundred Dollars (\$3,900.00). The invoices were made out to "Golden Spike Little League c/o Dave Anderson" without Anderson's approval or consent (T 154, 167, 168).

Defendant-Respondent Anderson signed for \$113.00 worth of merchandise; Bloxham, \$31.25; and Boren, none. Neither of these

Defendants-Respondents ever ratified or accepted the entire obligation nor the responsibility for it (T 258, 331, 189, 33).

The games were played; the dust settled; the team departed in victory or defeat; the program had been a success, but Mayor Larsen and his finance committee had not provided the finances to pay for the purchases from Plaintiff-Appellant.

ARGUMENT

POINT I

GOLDEN SPIKE LITTLE LEAGUE WAS AN AGENT OF LITTLE LEAGUE BASEBALL, INC.

Little League Baseball, Inc. is a federally chartered corporation and was vested with all of the powers of a domestic corporation. It is well known that a corporation being a creature of the law must act only through agents. (36 U.S.C.A. Pocket Sup., Chapter 41 A, Sec. 1081 provides:

"The corporation shall be liable for the acts of its officers and agents when acting within the scope of their authority."

Exhibits 15 D and 16 D are the charters issued to Golden Spike Little League wherein it was, by the terms of the Charter "granted herein all privileges needed for proper conduct of your league consistent with the best interest of the Little League Movement."

It may be argued that it was not the intent of Little League Baseball, Inc. that Golden Spike Little League and/or its members could act as agents of the federal corporation, but this

is one of the bases that Little League Inc. left uncovered and the ruling of the Court is proper, that Golden Spike Little League, Inc. upon the payment of the dues and the issuing of the Charter became an agent of Little League Baseball, Inc.

POINT II

THE TRIAL COURT CORRECTLY RULED THAT THE DEFENDANTS-RESPONDENTS WERE NOT LIABLE TO THE PLAINTIFF-APPELLANT

We must consider that upon the call of the town mayor, a few well meaning public spirited citizens agreed to assist in the organization and supervision of Little League Baseball teams for the youth of the surrounding small towns. They chose to call themselves "Golden Spike Little League". The Mayor gave certain individuals title. There was no election (T 315) and no Board of Directors (T 232, 327, 328). Anyone present at any meeting, whether parents, the boy players or coaches could vote on any matter of policy (T 327, 328). There was no distinction between officer or member.

What did Defendant-Respondent Dave Anderson do that should make him liable for the debt? He merely asked Plaintiff-Appellant for a bid on uniforms and equipment and reported it to the organization (T 150). In addition, he signed for \$113.00 worth of merchandise. He, at no time, authorized anyone to charge any of the items from Plaintiff-Appellant (T 330) and at no time ratified or accepted the obligation as his (T 330,331).

As for the Defendant-Respondent Bloxham, he was the Chief Umpire at the onset and was made president only after the obligation was incurred (T 233, 237). (Emphasis ours) He never authorized anyone to incur the debt, obviously. He never acknowledged the debt as his nor did he at any time ratify the debt as his (T 233, 258).

Defendant-Respondent Gloria Boren answered an appeal in the newspaper to assist in the enterprise (T 181). She was asked to be secretary, was never elected to an office (T 187) and had no vote (T 188). She didn't authorize any expenditures of money for uniforms and equipment and never ratified the purchase and the debt incurred (T 189). Golden Spike Little League was neither a corporation nor a partnership. Certain persons assumed more responsibility in it than others. There was no Board of Directors. Policy seemed to be establish by anyone who chose to attend a meeting; therefore, it would appear there should be no legal liability for Defendant-Respondent Dave Anderson who merely obtained a price quote and relayed the information to the other members, or Defendant-Respondent Bloxham, who was an umpire and became president of the organization only after the entire debt had been incurred and Defendant-Respondent Boren who merely volunteered to be the secretary in that she transcribed the notes of the meetings and none of these Respondents ever authorized the obligation or ratified it and at the most, Anderson should be held responsible for \$113.00 and Bloxham \$31.25, which debts they

admittedly incurred on behalf of Golden Spike Little League.

See Security First National Bank of Los Angeles vs. Cooper, 145 P2d, 722 (Calif.)

"The liability of the members of an unincorporated association on contracts made by it varies according to the answer to the question, whether the association is one organized for profit. Here there is no doubt the association was not organized for profit. Such an association is not a partnership and its members are not liable as partners. Citing 7 C.J.S. on Associations, Section 32, Page 78, as follows: Membership as such imposes no personal liability for the debts of the association, but to charge a member therewith it must be shown that he has actively or constructively assented to or ratified the contract on which the liability is predicated. If, however, a member as such directly incurs a debt or expressly or impliedly authorizes or ratifies the transaction on which it is incurred he is liable as a principal."

See also Haun vs. Nored, 278 P2d, 569 (Oregon)

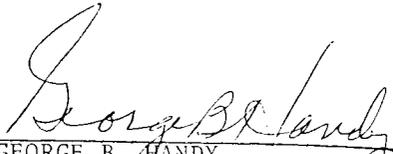
"A member of an unincorporated association is not obligated by a contract entered into it by the association through its officers unless the member expressly or impliedly consented to become so obligated."

CONCLUSIONS

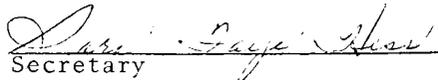
If Defendant-Respondent Anderson should be held liable at all it should be only as the basis that he contracted for \$113.00 worth of merchandise and he neither authorized or ratified the additional expenditures. Respondent Bloxham merely incurred an obligation of \$31.25 and also neither authorized nor ratified the incurring of the additional obligations. Respondent Boren made no purchases whatsoever and at no time authorized the expenditures

nor ratified the obligation after it was incurred.

Respectfully submitted.


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I certify that I mailed two copies of the foregoing to
David L. Gladwell, Attorney for Plaintiff-Appellant, 2910 Washington
Blvd., Ogden, Utah 84401, this 2 day of ~~August~~^{July}, 1977.


Secretary